

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2208 of 2020

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Sanyukta Devi W/o- Madhusudan Sah R/o- Belori, P.S.- Purnia, Distt.- Purnia.

... .. Petitioner/s

Versus

1. The State of Bihar Through Principal Secretary, Excise Deptt. Patna, Bihar.
2. The District Magistrate Katihar.
3. The Superintendent of Police Katihar.
4. The S.H.O. Azamnagar Police Station Katihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjeev Kumar Singh, Adv.
For the Respondent/s	:	Mr. Kumar Manish, SC-5
		Mr. Prashant Kumar, AC to SC-5

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
and
HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

Date : 31-01-2020

Heard Mr. Sanjeev Kumar Singh, learned counsel
for the petitioner and Mr. Prashant Kumar, learned A.C. to S.C.-
5 for the respondent -State.

With the consent of the parties, the matter is being
disposed of.

The present writ application has been filed for
release of a truck in favour of the petitioner bearing Registration
number BR-06GA-3268, seized in connection with Azamnagar
P.S. Case No. 298 of 2019, registered for the offences
punishable under Sections 278, 427 of the Indian Penal Code



and Section 37(c) of Bihar Prohibition and Excise (Amendment) Act, 2016, as amended by Amendment Act 8 of 2018 (hereinafter referred to as 'the Act'). The relief(s), as stipulated in paragraph no.1 of the petition, read(s) as follows:-

“That this is an application for issuance of an appropriate writ for the order or direction, directing the respondents to release the vehicle (Truck) bearing Registration No. BR-06GA-3268 in favour of the petitioner which has been seized in connection with Azamnagar P.S. Case No. 298 of 2019, dated 25.11.2019, u/s 278, 427 of the I.P.C. and 37(c) of Bihar Prohibition and Excise Act 2016, alleging the driver of the truck was found in drunken condition who made the accident of the truck in which the confiscation proceeding is not initiated by the learned Court of the District Magistrate, Katihar.”

The prosecution case got initiated on the basis of written report of one Lav Paswan, S.I., Aazamnagar Police Station, Katihar submitted before the S.H.O., Aazamnagar Police Station to the effect that on 14.11.2019 at 10.30 P.M. during patrolling, the informant, after having received information that a truck has met with an accident, reached at the spot and found the driver of the truck, Sanjeet Kumar in drunken condition and due to his rash and negligent driving, the vehicle in question had met with an accident, leading to registration of Azamnagar P.S. Case No. 298 of 2019.

It is submitted by learned counsel for the petitioner



that the petitioner is the registered owner of the vehicle in question and a copy of certificate of registration of the vehicle in question has been brought on record as Annexure-2. This is an admitted position that no recovery of liquor or intoxicant was made from the vehicle in question and the seized vehicle is rotting under the open sky. It is further submitted that since there is no recovery and the vehicle was not being used for carrying liquor or intoxicant, hence it is not liable for confiscation under the provisions of Section 56 of the Act.

It is further submitted that the confiscation proceeding has not been initiated till date, statement to that effect has been made in paragraph No.17 of the writ petition, which reads as under :-

“That from the bare perusal of the evidential material it appears that the vehicle is seized on 15.11.2019 but till the date no confiscation proceeding is initiated by the learned Court of District Magistrate, Katihar.”

Learned counsel for the respondents submits that this is an admitted position that neither any intoxicant nor liquor has been recovered from the vehicle in question nor the same was being used for carrying any such prohibited article. Hence, *prima facie*, it is not liable for confiscation. However, learned



counsel for the respondents has no objection with regard to the provisional release of the vehicle in question.

However, learned counsel for the respondent does not have any instruction with regard to the initiation of confiscation proceeding. Even if the authority choose to initiate such proceeding then they have to comply the mandatory direction given in the case of *Diwakar Kumar Singh Vs. The State of Bihar and Ors.*, reported in 2018 (3) PLJR 403, wherein it has been held that it shall be mandatory for the confiscating authority, before passing final order in confiscation proceeding when the person is found in drunken condition but no liquor is seized from the vehicle nor the vehicle is used for transportation of the liquor, to decide it as a preliminary issue, whether in such a condition, the vehicle would be liable for confiscation under Section 56 of the Act. A copy of the said order was directed to be communicated to all the District Magistrates of the State through the office of the Advocate General.

Considering rival submissions of the parties, there is no dispute that there is not any recovery of liquor or intoxicant from the vehicle in question or the vehicle in question was found used carrying liquor, though the case has been lodged under Sections 279, 427 of the Indian Penal Code and Section



37(c) of Act. Section 279 of the Indian Penal Code stipulates rash driving or riding on a public way whereas Sections 37 of the Act prescribes for penalty for consumption of liquor, if any person drinks and creates nuisance or violence at any place including in his own house or premises, which reads as under :-

“37. Penalty for consumption of liquor.—Whoever, in contravention of this Act or the rules, notification or order made there under -

(c) drinks and creates nuisance or violence at any place including in his own house or premises; or”

Having heard learned counsels for the parties, we are of the opinion that Section 56 of the Act provides the conditions in which anything can be liable for confiscation. Section 56 of the Act reads as follows:-

“56. Things liable for confiscation.-

Whenever an offence has been committed, which is punishable under this Act, following things shall be liable to confiscation, namely-

(a) any intoxicant, liquor, material, still, utensil, implement, apparatus in respect of or by means of which such offence has been committed;

(b) any intoxicant or liquor unlawfully imported, transported, manufactured, sold or brought along with or in addition to, any intoxicant, liable to confiscation under clause(a);

(c) any receptacle, package, or covering



in which anything liable to confiscation under clause (a) or clause(b), is found, and the other contents, if any, of such receptacle, package or covering;

(d) any animal, vehicle, vessel or other conveyance used for carrying the same.

(e) any premises or part thereof that may have been used for storing or manufacturing any liquor or intoxicant or for committing any other offence under this Act.”

Section 56(b) of the Act is relevant, which suggests that any animal, vehicle, vessel or other conveyance used for carrying the intoxicant is liable for confiscation.

This is an admitted fact that there was no recovery of liquor or intoxicant from the vehicle in question. This is also not the case that the liquor was being carried through the vehicle in question. This is an admitted position that the confiscation proceeding has not been initiated. In the circumstances, prima facie, it appears that under Section 56 (b) of the Act, the seized vehicle is not liable for confiscation, as it was not being used for carrying liquor.

Since there is a bar under Section 60 of the Act for any Court to pass any order with regard to the seized vehicle, the Special Judge has no jurisdiction to release the vehicle. However, this bar under Section 60 of the Act will not apply in exercise of the jurisdiction under Article 226 of the Constitution



of India. Hence, in such a circumstance, the case comes within one of the exceptions where the discretionary jurisdiction under Article 226 of the Constitution of Indian can be exercised for releasing the vehicle seized, as has been held in the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Ors., reported in (1998) 8 Supreme Court Cases 1.

In the facts and circumstances of the present case, no useful purpose will be served in allowing the vehicle to rot under open sky, leading to a complete waste of public money. Keeping the vehicle in such condition and allowing to rot will be ultimately reduced it into junk and that too only for the purpose of producing it as material exhibit , which has been deprecated by the Supreme Court in the case of *Sunderbhai Ambalal Desai Vs. State of Gujrat* and other analogous cases (2002) 10 SCC 283 and in the case of General Insurance Council and Ors. Vs. State of Andhara Pradesh and Ors. (2010) 6 Supreme Court Cases 768.

Considering the discussions made above, we direct for provisional release of the vehicle in question, till conclusion of the trial or conclusion of confiscation proceeding, if any at all initiated to the satisfaction of learned ADJ-II-cum-Special Judge, Katihar, in connection with Azamnagar P.S. Case No.



298 of 2019, on the following conditions:

(I) The petitioner will produce the proof of valid certificate of registration/ownership in his favour including the insurance papers of the vehicle in question before the learned A.D.J.-cum-Special Judge (Excise), Katihar;

(II) The petitioner will furnish bank guarantee of rupees five lacs, with two sureties of the like amount to the satisfaction of the Special Court concerned or the confiscation authority, as the case may be;

(III) The petitioner shall give an undertaking on affidavit that he will not deal with the vehicle in question or alienate or encumber the same creating any kind of adverse interest against the interest of the State during the pendency of the confiscation proceeding;

(IV) The petitioner will not use the vehicle for any illegal purpose and as and when required, he will produce the vehicle in question before the court or authority concerned.

(V) At the time of release of the vehicle in question, the concerned court or authority shall get prepared photo copy of the vehicle in question duly certified in presence of the petitioner;

(VI) Panchnama of the vehicle in question shall



also be prepared and will be kept on record which may be used as secondary evidence and the petitioner will furnish an affidavit incorporating therein an undertaking not to challenge the said photo copy or panchnama so prepared in his presence at the time of release of the vehicle in question for use in course of the trial or confiscation proceeding as the case may be.

The entire exercise will be done by the learned Special Judge, Patna within ten days of receipt/production of a copy of this order.

It is made clear that we have not expressed any opinion with regard to the merits of this case or with regard to the ownership of the vehicle in question.

Accordingly, the writ application is allowed to the extent as indicated above.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

Ashwini/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	
Transmission Date	NA

