

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1855 of 2020

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Amit Kumar S/o Bijay Kumar Sinha @ Vijay Kumar Sinha, C/o Ravi Shankar Bharti, Resident of Eat Lohanipur, Das Lane, P.S. Kadamkuan, District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise Department, Government of Bihar, Patna.
2. The Collector, Nawada.
3. The Superintendent of Police Nawada.
4. The Officer-in-Charge, Akbarpur Police Station, Nawada.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Surya Kant Mishra
For the Respondent/s : Mr.Kumar Manish (Sc5)

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE S. KUMAR)

(The proceedings of the Court are being conducted through Video Conferencing and the Advocates joined the proceedings through Video Conferencing from their residence.)

Date : 09-07-2020

Heard learned counsel for the petitioner and learned

counsel for the State.

Petitioner has prayed for following relief:-

“ This writ application is being filed for issuance of writ in the nature of mandamus or any other appropriate writ/writs, order/orders, direction/directions commanding the respondents Collector to release the petitioner’s vehicle namely Maruti DX 800 being Registration No.BR-1L/4012, Chassis No.269217, Engine No.748322, which has been seized in connection by the Akbarpur Police in connection with Akbarpur P.S.Case No.230/19 registered under Section 279 IPC and 37(c) of Bihar



Prohibition and Excise Act, 2016 on 04.6.19. The vehicle has illegally been seized for a confiscation proceeding, though nothing was recovered from the said vehicle except the driver was in a drunken condition.

This writ application is also being filed against the order dated 26.11.19 passed by the 2nd Addl. District & Sessions Judge-cum-Special Judge, Nawada in connection with Akbarpur P.S. Case No.230/19 inter alia on the ground that a communication has been sent to the respondent Collector for the confiscation of the vehicle vide Memo No.1238/19 dated 05.6.19 without appreciating the fact that there is no question for confiscation of the vehicle which was being driven by the driver of the drunken condition.”

Allegation against the accused driver of the vehicle is driving the vehicle in a drunken condition as a result of which, vehicle met with an accident for which FIR was lodged giving rise to Akbarpur P.S.Case No.230/19 dated 4.6.19 registered under Section 279 IPC and Section 37(c) of Bihar Prohibition and Excise Act, 2016.

Petitioner who claims to be the owner of the seized vehicle has filed an application in the court of Special Judge, Excise, Nawada for release of the vehicle which was rejected by order dated 26.11.2019 as contained in Annexure 2.

It is submitted on behalf of petitioner that no illicit liquor has been recovered from the seized vehicle which is apparent from the FIR as well as seizure memo as such seized vehicle is not liable for confiscation under Section 56 of the



Excise Act and bar of jurisdiction in confiscation as contemplated under Section 60 of the Act is not applicable and the Special Court, Excise where the excise case is pending has jurisdiction to pass order of provisional release of the vehicle.

In view of law laid down by Division Bench of this Court in case of Diwakar Kumar Singh vs. State of Bihar since reported in 2018 (3) PLJR 403 and following said judgment as well as other judgments passed by this Court, the Excise Commissioner, Bihar Patna in appeal arising out of Confiscation Case No. 107/2019 Ajit Roy Vs. Collector, Sheohar has held that transportation of prohibited article under the Act is a sine qua non for a vehicle to be confiscated.

The relevant paragraph of order passed in Appeal by Excise Commissioner is quoted below:-

“From the aforesaid judgment and order passed by the Hon’ble High Court of Patna it is well established that the transportation of prohibited article under the Act, 2016, is a sine qua non for a vehicle to be confiscated on the passing of an order by the District Collector. Therefore the confiscation order passed by the learned Collector, Sheohar in confiscation Case No. 107/2019 on 09.12.2019 is hereby ordered to be modified to the extent that the three motorcycles bearing registration No. BR-06BJ 6591; BR-06BL 5384 and BR-55 4036 will be released after verifying the document related to registration and owner of the said vehicle.”

Accordingly, the order dated 26.11.19 passed by the 2nd



Addl. District & Sessions Judge-cum-Special Judge, Nawada ,
as contained in Annexure 2 is set aside and Special Court,
Excise is directed to pass a fresh order on the petition of
petitioner for release of vehicle within 30 days from date of
receipt/production of a copy of the order passed by this Court.

With aforesaid observation and direction, this writ
application is disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.07.2020
Transmission Date	NA

