

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3412 of 2020

Manish Kumar, aged about 24 years (M), Son of Late Jata Shankar Prasad Sinha, Resident of Village- Khaira, P.S.- Rajoun, District- Banka.

... .. Petitioner/s

Versus

1. The State of Bihar through Director General of Police Government of Bihar, Patna.
2. The Director General of Police Government of Bihar, Patna.
3. The Commissioner Excise Dept. Govt. of Bihar, Patna.
4. The District Magistrate, Banka, District- Banka.
5. The Excise Superintendent, Banka, District- Banka.
6. The Officer- in Charge, Dhankund, District- Banka.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Dhananjay Kumar Gupta

For the Respondent/s : Mr. Vikash Kumar (Sc11)

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

Date : 03-03-2020

Heard Mr. Dhananjay Kumar Gupta, learned counsel for the petitioner and learned AC to SC – 11.

The present writ application has been filed for release of X BLADE HONDA motorcycle bearing Registration no. BR10AA9794, which has been seized in connection with Dhankund P.S. Case No. 32 of 2019, registered for the offence punishable under Sections 30(a) (G) / 32(2) of the Bihar



Prohibition and Excise Act, 2016 as amended by the Amendment Act 8 of 2018 (hereinafter referred to as “the Act”).

The prayer as stipulated in paragraph- 1 of this writ application reads as follows:-

“That this Writ application is being filed for issuance of a writ in the nature of Mandamus for direction for releasing the seized motorcycle bearing Registration No. BR10AA9794, Chasis No. ME4KC351EJ8017156, Engine No. KC35E-80017196 which has been seized by the Officer-in-Charge, Dhankund in Dhankund P.S. Case No. 32 / 2019 and further issue direction to respondents release seized motorcycle bearing Registration No. BR10AA9794, Chasis No. ME4KC351EJ8017156, Engine No. KC35E-80017196 to the petitioner as he is ready to furnish surety for release and further give other legal consequential benefit to the petitioner.”

The prosecution case as per the written report of Manoj Kumar Singh, Station House Officer, Dhankund P.S. submitted to the Special Judge, Excise, Banka is to the effect that on 14.03.2019 during patrolling at 9.00 P.M. at Manihat bridge while conducting vehicle check, the motorcycle in question was intercepted and from the same about 13.00 liters of Indian Made Foreign Liquor was recovered leading to registration of Dhankund P.S. Case No. 32 of 2019.



Learned counsel for the petitioner submits that petitioner is the registered owner of the vehicle in question. The certificate of registration of the vehicle in question has been brought on record as Annexure - 2 to this writ application. The vehicle is rotting under the open sky and keeping the vehicle in such condition and allowing to reduce it into a junk would ultimately result into wastage of public money which has been deprecated by the Hon'ble Supreme Court in the case of *Sunderbhai Ambalal Desai Vs. State of Gujrat* and other analogous cases reported in (2002) 10 SCC 283 and in the case of *General Insurance Council and Ors. Vs. State of Andhara Pradesh and Ors.* reported in (2010) 6 Supreme Court Cases 768 and if the vehicle in question is released, the petitioner is ready to produce the vehicle as and when required by the concerned court and will not change the shape of the motorcycle or transfer the same during the pendency of confiscation proceeding, if any.

Learned counsel for the respondent relying upon the counter affidavit filed on behalf of the respondent no. 6 i.e. the Officer -in- charge, Dhankund P.S. submits that proposal / report has been transmitted by letter no. 240 dated 03.09.2019 by the Superintendent Of Police, Banka and thereafter, confiscation proceeding bearing Confiscation (Prohibition) Case No. 557 of



2019-20 has been initiated vide order dated 08.01.2020 passed by Collector, Banka.

Considering the fact that confiscation proceeding has been initiated and in view of the ratio laid down by the Full Bench of this Court in the case of Baleshwar Roy and Ors. Vs. The State of Bihar and Ors. reported in 2018 (4) PLJR 970, wherein it has been held that on initiation of confiscation proceeding, this court cannot interfere and exercise jurisdiction under Article 226 of the Constitution of India except in monstrous conditions, paragraph nos. 62 to 66 of the said judgment reads as follows:-

“62. It may, however, be added that Article 226 of the Constitution of India provides power to the High Court to issue writs to any person or authority, including in appropriate cases, any Government, any order or writs (including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part-III and for any other purpose). Similarly Article 227 of the Constitution of India provides the power of superintendence over all Courts and Tribunals throughout the territories in relation to which any High Court exercises its jurisdiction. The powers of the High Court under Articles 226 and 227 of the Constitution of India cannot be curtailed under any circumstance, as the power flows from the Constitution itself. No statutory



bar can affect the power of the High Court under Articles 226 and 227 of the Constitution of India.

63. Despite such wide and untrammelled powers, without any circumscription by external restrictions, the Courts have evolved certain self-imposed limits while exercising these powers. The High Courts, normally, would not go beyond justified inhibitions under any Statute except where there is a complete jettisoning of rule of law or under exceptional circumstances which demand timely judicial interdict. This inhibition is basically ordained, keeping in mind that there is a national weal behind any valid piece of Legislation incorporating and inhering in itself the social objective behind any Legislation. Though, no limitations or fetters have been put on the powers of the High Court under Articles 226 and 227 of the Constitution of India, as the High Courts perform as sentinel on the qui-vive, but such power is not to be exercised casually and without coming to the conclusion that non-exercise of such power would lead to positive injustice. Times without number, it has been held by the High Courts that only under condition of a person establishing that substantial injustice has or is likely to ensue, such extraordinary powers can be exercised. It needs no adumbration by this date that the plenary powers of the High Court have only to be exercised in the interest of justice.



64. Thus, an order of release may be passed under Article 226/227 of the Constitution of India, even pending confiscation proceedings, but only when it is established before the Court that the procedure prescribed and the law in that regard has been completely flouted and that there is complete violation of the procedure prescribed for confiscation, viz., notice to the offender before confiscation, allowing him opportunity of giving written representation and affording hearing on the issue to him and that such injustice cannot be remedied without the exercise of the extraordinary power.

65. Needless to state that under Article 226 of the Constitution of India, the Court will not go into the disputed question of facts.

66. Thus, the powers directing for release of the vehicles or goods, during the pendency of the confiscation, can only be sparingly exercised under monstrous situations and circumstances when injustice occurs because of non-fulfillment of the conditions for confiscation.”

In view of the above mentioned position of law, we are not inclined to interfere at this stage, however, it is expected from the respondent no. 4 i.e. District Magistrate, Banka to conclude the confiscation proceeding in Confiscation (Prohibition) Case No. 557 of 2019-20 within a period of six weeks from the date of receipt / production of a copy of this order. It is expected from the



petitioner to appear regularly in the confiscation proceeding
pending before the Collector, Banka.

Accordingly, the writ petition is disposed of .

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

praful/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	18-03-2020
Transmission Date	NA

