

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3309 of 2020

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Pramod Sah Son of Sikandar Sah, Resident of village Fullidumar, P.s.-
Fullidumar District- Banka

... .. Petitioner/s

Versus

1. The State of Bihar through Collector, Banka
2. The Collector, Banka
3. S.H.O. P.s. Fullidumar, District- Banka
4. The Principal Secretary, Prohibition and Registration Department, State of Bihar, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Mritunjay Prasad Singh
For the Respondent/s : Mr. Rewati Kant Raman, AC to SC 11

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
and
HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

2 03-03-2020 Heard learned counsel for the petitioner and the respondents.

Through the present writ application, the petitioner has prayed for release of Bajaj Discover Motorcycle of the petitioner bearing Registration No. BR-10T-2124, and for quashing the order dated 27.09.2019, passed by the Collector, Banka, in Confiscation (Excise) Case No. 65 of 2019-20 whereby the Bajaj Discover Motorcycle of the petitioner bearing Registration No. BR-10T-2124 has been confiscated.

Relief prayed for in paragraph 1 of the writ



application reads as follows:

“(i) For issuance of writ of Mandamus commanding the respondent authority to release two wheeler (Motor Cycle) of the petitioner bearing its registration no. BR-10T/2124, Chassis No. MD2A57BZ7ERH80637, Engine No. PAZREH-70930.

(ii) For issuance of writ of Certiorari to quash the order dated 27.09.2019 passed by the Collector, Banka, in Confiscation (Excise) Case No. 65 of 2019-20 by which he has pleased to pass order for confiscation and to conduct auction of the same.”

The prosecution case got initiated on the basis of written report of Vijay Kumar Tiwari, Assistant Sub-Inspector of Police submitted to the S.H.O., Fullidumar Police Station, to the effect that on 11.02.2019 at 8.30 P.M, during vehicle check, one motorcycle was intercepted, upon which three persons were travelling, who disclosed their names as Bibhash Kumar, Bipin Kumar and Shravan Kumar and from the motorcycle in question, one litre of Mahua Liquor was recovered and hence, the seizure was made under Section 30 (a) of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as ‘the Act’).

It is submitted by learned counsel for the petitioner



that only on the basis of suspicion, the motorcycle in question has been confiscated and it has not been auctioned till date.

Learned counsel for the State submits that the final order in confiscation proceeding has been passed and the motorcycle in question has already been confiscated and against the final order of confiscation, appeal lies under Section 92 of the Act. Hence, the order has been passed by the Collector in consonance to the provision under Section 58(2) of the Act.

Considering the fact that the final order has been passed in the confiscation proceeding and the Act provides an alternative efficacious remedy of appeal in Chapter IX under Section 92 (2) of the Act against the order passed by the Collector before the Excise Commissioner within ninety days of the order complained of, this Court is not inclined to interfere in the matter.

Accordingly, this writ application is disposed of with a liberty to the petitioner to prefer appeal within a period of four weeks along with an application for condonation of delay. If such appeal is filed by the petitioner, the appellate authority is expected to consider application for condonation of delay in view of the fact that the writ application of the petitioner was pending before this Court and dispose of the appeal within a



period of ten weeks from the date of its filing.

Needless to say, in case the vehicle in question has not been auction sold till date, it will not be put on auction sale till the disposal of appeal before the appellate authority, if so filed.

(Dinesh Kumar Singh, J.)

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

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