

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2080 of 2020

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Rajaram Saw @ Raja Ram Sav, Son of Ganga Sav@ Ganga Saw, Resident of
Village- Faridpur Baghakol, P.O. Patut and P.S. Bikram, District- Patna,
801112, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise Department,
Government of Bihar, Patna.
2. The District Magistrate, Patna.
3. The Superintendent of Police, Patna.
4. The Station House Officer, Police Station, Naubatpur, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sayed Imran Ghani, Adv. Mr. Amrit Kumar, 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 : 29-01-2020

Heard learned counsel for the petitioner and the
respondents.

The present writ application has been preferred for
release of Hero Passion Pro motorcycle of the petitioner bearing
Registration No. BR-01-BF-6537 which has been seized in
connection with Naubatpur P.S. Case No.611 of 2019, registered
for the offence punishable under Section 30(a) of the Bihar
Prohibition and Excise Act, 2016, as amended by Amendment



Act 8 of 2018, (hereinafter referred to as ‘the Act’). The prayer as stipulated in paragraph No.1 of the writ petition reads as under :-

“That the petitioner seeks the following relief :

A. For issuance of appropriate writ(s), order(s), direction(s) in the nature of mandamus directing and commanding the respondent – authorities to release the Hero Passion Pro motorcycle bearing registration No. BR-01BF-6537, in favour of the petitioner, which is seized in connection with Naubatpur P.S. Case No. 611/2019 dated 20.09.2019, registered under section 30(a) of Bihar Prohibition and Excise Act, 2016.

B. Any other relief(s) for which the petition is found entitled to.”

The prosecution case got initiated on the basis of written report submitted by Md. Rushtam Khan, A.S.I. of Police, before the S.H.O., Naubatpur to the effect that on 20.09.2019 at 06.15 A.M., during patrolling, on the basis of secret information to the effect that illicit liquor is being transported through a three wheeler and a motorcycle, vehicle check was made, consequently, a three wheeler and a motorcycle were intercepted. From the three wheeler, 200 litres of Mahua Liquor were recovered and two persons were



apprehended, who disclosed their names as, Md. Sahzad, the driver and Pintu Kumar whereas from the motorcycle, 100 litres of Mahua liquor were recovered and Sunil Kumar, who was driving the motorcycle was apprehended, leading to registration of Naubatpur P.S. Case No.611 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 has been brought on record as Annexure-2. It is further submitted that though the petitioner has received a notice suggesting initiation of confiscation proceeding being Confiscation Case No. 2325 of 2019-20, but it has not been concluded till date and the vehicle in question is rotting in the open sky. It is further submitted that the seizure has been made by an A.S.I., whereas, Section 73(e) of the Act stipulates that the seizure cannot be made by an officer below the rank of Sub Inspector of Police.

Mr. Prashant Kumar, learned AC to SC-5 submits on the basis of counter affidavit filed on behalf of respondent No.2 that on the proposal of the Sr. Superintendent of Police, Patna, Confiscation Case No. 2325 of 2019-20 has been initiated by the District Magistrate, Patna. It is further submitted that proceeding of the said confiscation case will be concluded



within a time frame.

Having heard learned counsels for the parties and considering their rival submissions, we are of the considered view that the FIR was lodged and the seizure was made by A.S.I. of Police whereas Section 73(e) of the Act stipulates that the seizure cannot be made by an officer below the rank of Sub Inspector of Police. Hence, the very seizure appears to be dehors the provisions of the Act. Section 73(e) of the Act reads as under :-

“73. Power to enter, inspect, search and seize.—Any of the following officers namely:

(e) Any police officer not below the rank of Sub Inspector; or”

Considering the fact that once the confiscation proceeding is initiated, the exercise of discretionary jurisdiction under Article 226 of the Constitution of India, having self imposed restrictions can be exercised in exceptional or in a monstrous situation which has been deprecated by the Apex Court in the case of **State of Karnataka Vs. K. Krishnan** reported in **(2000) 7 Supreme Court Cases 80** and in the case of **State of West Bengal and Ors. Vs. Sujit Kumar Rana** reported in **(2004) 4 Supreme Court Cases 129**, as well as a



Full Bench of this Court in the case of **Baleshwar Roy Vs. The State of Bihar and Ors.** reported in **2018(4) PLJR 970.**

Since the vehicle in question was seized on 20.09.2019, it is expected that the Respondent No. 2, the District Magistrate-cum-Collector, Patna will conclude the proceeding of the Confiscation Case No.2325 of 2019-20 within a period of six weeks from the date of receipt/production of a copy of this order in accordance with law.

The petitioner is also expected to appear regularly and participate in the confiscation proceeding.

Accordingly, with the above observation and direction, the present writ application is disposed of.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

Ashwini/-

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

