

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2225 of 2020

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Ranjeet Kumar Choubey @ Ranjeet Kumar Chobay @ Ranjit Kumar Chaubey, Son of Ramkrishna Chaubey, Resident of Village- Nawada, Amba, Govindganj, Dist- Motihari (East Champaran).

... .. Petitioner/s

Versus

1. The State of Bihar through the Excise Commissioner, Govt. of Bihar, Patna.
2. The District Magistrate, Muzaffarpur, District - Muzaffarpur.
3. The Superintendent of Police, Muzaffarpur, District- Muzaffarpur.
4. The Station House Officer, Kanti Police Station, District- Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjay Kumar, Adv. Mr. S. K. Bhatnagar, Adv. Mr. Rabindra Kumar, Adv.
For the Respondent/s	:	Mr. Vivek Prasad, GP-7

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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. Sanjay Kumar, learned counsel for the petitioner and Mr. Vivek Prasad, GP-7 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 Scorpio vehicle bearing Registration number BR-05H-5832, in favour of the petitioner, seized in connection with Kanti P.S. Case No. 637 of 2019, registered for the offences punishable under Sections 342, 354A, 354B, 506 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 appropriate writ directing the respondent authorities to release the petitioner's Scorpio vehicle VLX 2 2 HAWK, bearing registration No. BR 05H 5832, which has been seized in connection with Kanti Police Station Case No. 637/2019, Dist-Muzaffarpur, registered for offence punishable under section 342/354A/354B and 504 of the I.P.C. & 37 (c) of the Bihar Prohibition & Excise Act, 2016.”

The prosecution case got initiated on the basis of written report of one Manisha Kumari submitted to the S.H.O., Kanti Police Station, Muzaffarpur to the effect that on 25.08.2019 at 7.30 P.M., when the informant was returning to her home, after purchasing some articles, on the way, two persons came on a Scorpio vehicle and forcibly made her board into the Scorpio vehicle and started teasing with her. Subsequently, on seeing the police vehicle, when the informant raised alarm, the police came and apprehended both the persons, who disclosed their names as, Ranjeet Kumar Chaubey and Rustam Alam. It is alleged that out of two persons, one person was found in drunken condition, leading to registration of Kanti P.S. Case No. 637 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-3. 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. Moreover, the medical report of the doctor, annexed with the FIR only suggests that foul smell was coming from the mouth of the petitioner and other co-accused, Rushtam Aalam. In the present case, Section 37(c) is not made out as Section 37(c) mandates that if any person drinks and creates nuisance or violence at any place including in his own house or premises shall be punishable in accordance with Section 37(1) and (2) of the Act.

It is further submitted that in fact, the informant and the petitioner are in love with each other from before and the informant wanted to perform marriage with the petitioner for which, the petitioner was not ready and on his refusal, the informant who herself boarded in the vehicle of the petitioner



started creating ruckus and levelled false accusation against the petitioner before the police. Moreover, the designation of the seizing authority has not been mentioned in the seizure list deliberately which clouds suspicion whether he actually was authorized to make seizure under Section 70(e) of the Act and the petitioner has not received any notice suggesting initiation of confiscation proceeding, though no statement to that effect has been made in the petition.

Learned counsel for the respondents submits that this is an admitted position that neither any intoxicant nor liquor has been seized 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. Hence, 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 directions 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 and no liquor is seized from the vehicle in question 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 any recovery of liquor or intoxicant from the vehicle in question nor the vehicle in question was found used carrying liquor, though the case has been lodged under Sections 342, 354A, 354B, 504 of the Indian Penal Code and Section 37(c) of Act. Section 37(c) 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”

This is an admitted position that liquor or intoxicant has been recovered from the vehicle in question. This



is also not a 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 of the Act, the seized vehicle is not liable for confiscation, as it has not been 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, in our considered opinion, 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



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, Muzaffarpur, in connection with Kanti P.S. Case No. 637 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), Muzaffarpur;

(II) The petitioner will furnish bank guarantee of rupees Two 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

