

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2219 of 2020

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Ravindra Mandal, Son of Lakshman Mandal, Resident of Village-Achara
ward no. 08, Police Station-Fulkaha, District-Araria Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Excise,
Government of Bihar, Patna.
2. The Excise Commissioner, Bihar, Patna.
3. The District Magistrate, Araria.
4. The Superintendent of Police, Araria.
5. The Superintendent of Excise, Araria.
6. The S.H.O. Fulkaha Police Station, District-Araria.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mukesh Kumar Rana
For the Respondent/s : Mr. Kumar Pankaj, 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 : 18-02-2020

Heard Mr. Mukesh Kumar Rana, learned Counsel for the
petitioner and Mr. Kumar Pankaj, learned A.C. to SC 5 for the
respondents.

The present writ application has been filed for release of
Hero Glamor motorcycle, bearing Registration No. BR38F-9480,
seized in connection with Fulkaha Police Station Case No. 174 of
2019, registered for the offences punishable under Sections 30(a)
and 37 (c) of the Bihar Prohibition and Excise Act, 2016, as
amended by Amendment Act 8 of 2018 (hereinafter referred to as
'the Act').



The relief, as prayed for in paragraph 1 (i) of this application, reads as follows:-

“To issue writ of mandamus directing and commanding the respondents to release the motorcycle of the petitioner bearing registration no. BR38F-9480, chassis no. MBLJA06AMEGK00 553 and Engine no. JA06EJEGK00659, which was seized on 08.11.2019 in Fulkaha Police Station Case No. 174 of 2019 registered under sections-30(a), 37 (c) of the Bihar Prohibition and Excise Act, 2016 or alleged recovery of one litre country made wine for which confiscation proceeding has not been initiated till date.”

The prosecution case got initiated with the self-statement of Haresh Tiwari, Sub Inspector of Police -cum- Officer-in-Charge of Fulkaha Police Station, to the effect that on 08.11.2019, at 06:45 PM, during patrolling duty, two persons were found coming on a motorcycle, bearing Registration No. BR38F-9480, and on seeing the police party, both of them tried to flee away, but they were apprehended, the driver disclosed his name as Rabindra Mandal and name of the pillion rider as Suraj Bahardar, and both were found in drunken condition and from the motorcycle in question, one litre of country made liquor was recovered, leading to the registration of Fulkaha Police Station Case No. 174 of 2019.

It is submitted by learned counsel for the petitioner that the petitioner is the registered owner of the vehicle in question and



the certificate of registration of the seized vehicle has been brought on record, as Annexure-2.

A counter affidavit, dated 02.02.2020 has been filed on behalf of respondent no.3, the District Magistrate, Araria, stipulating at paragraph no. 7 therein that with respect to the vehicle in question, confiscation proceeding being Confiscation Case No. 97/2020 has already been initiated. Paragraph 7 reads as under :-

“7. That apart from the fact submitted above, it is also important to mention here that under the provisions of the Bihar Prohibition and Excise Act, 2016, there is no provision to release vehicle which has been used in commission of an offence under the Act on any condition, hence in order to protect the interest of the State, the aforesaid motorcycle in question is required to be confiscated under section 58 (2) of Bihar Prohibition and Excise Act, 2016. Hence, with regard to confiscation of the aforesaid seized motorcycle in question, the Superintendent of Police, Araria, vide Memo No. 3793 dated 18-12-2019 sent recommendation to the District Magistrate, Araria on which basis Confiscation Case No. 97/2020 has been started and in this case vide Memo No. 360, dated 01-02-2020 notice has also been issued to the petitioner from the court of Collector, Araria, which is to be served upon the petitioner through Special Messenger for his appearance and for filing of show cause on 08-02-2020 which proves the confiscation case with regard to the seized motorcycle in question is pending in the court of Collector, Araria.



Therefore, the petitioner does not deserve any relief.”

It is submitted by learned AC to SC-5 that confiscation proceeding in relation to the motorcycle in question will be concluded within a given time frame.

Considering the fact that once the confiscation proceeding has been initiated, the exercise of discretionary jurisdiction under Article 226 of the Constitution of India, having self imposed restriction can be exercised only in exceptional or in a monstrous situation. Considering the view taken by the Apex Court in the case of **State of Karnataka Vs. K. Krishnan**, reported in **(2000) 7 SCC 80** and in the case of **State of West Bengal and Ors. Vs. Sujit Kumar Rana**, reported in **(2004) 4 SCC 129**, 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**, held 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.”

Considering the fact that confiscation proceeding has already been initiated and learned Counsel for the petitioner does



not dispute about the issuance of notice of the confiscation proceeding, We are not inclined to interfere in the confiscation proceeding. However, since the vehicle in question was seized on 08.11.2019, it is expected that the Respondent No. 3, the District Magistrate, Araria shall conclude the proceeding of Confiscation Case No. 97/2020 within a period of two months 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.

Let a copy of this order be communicated to the District Magistrate, Araria, through fax/E-mail, immediately.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

Prabhakar Anand/-

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

