

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3205 of 2020

=====

Arvind Kumar, Son of Chotu Ram, R/o Village- Bhewar, P.O. and P.S. Chand,
District- Kaimur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise Department,
Govt. of Bihar, Patna.
2. The District Magistrate-Cum-Collector, Kaimur at Bhabua.
3. The Superintendent of Police, Kaimur at Bhabua.
4. The Officer-in-Charge Chand Police Station, Kaimur at Bhabua.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr.Dharmendra Kumar Singh
For the Respondent/s : Mr.Vivek Prasad (Gp7)

=====

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
and

HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

Date : 27-02-2020

Heard Mr. Dharmendra Kumar Singh, learned
counsel for the petitioner and learned A.C. to G.P.-7, appearing on
behalf of the State.

This writ application has been preferred with a prayer
for a direction to the respondents to release the Motorcycle bearing
Registration No. BR-45H-3290, which has been seized in
connection with Chand P.S. Case No.135 of 2019, registered under
Section 30(a) of Bihar Prohibition and Excise Act, 2016 as
amended by the Amendment Act 8 of 2018 (hereinafter referred to
as 'the Act).



The relief, prayed for by the petitioner in paragraph No.1 of the writ application reads as follows :-

“1. (i) To issue an appropriate writ/ writs, order/orders, direction/directions including a writ in the nature of Mandamus commanding the respondents to release the vehicle (Motorcycle) of the petitioner bearing Registration No.-BR-45H-3290, Engine No.-JA05EGH9F25807, Chasis No.-MBLJAR033H9F 18968, which is belonging to the petitioner and seized in Chand P.S. Case No.135 of 2019 dated 11.07.2019 instituted u/s 30(a) of Bihar Excise Act.

(ii) To issue an appropriate writ/order or direction directing the respondents not to take any coercive measure against the vehicle of the petitioner.

(iii) To grant any other writ/order or direction may be issue in which the petitioner is entitled to.”

The prosecution case got initiated on the basis of written report submitted by Mr. Paras Mehta, Sub Inspector of Police, submitted to S.H.O. Chand P.S., to the effect that on 11.07.2019, two persons traveling on the motorcycle did not stop for police checking upon which they were chased and intercepted, who disclosed their name as Udai Kumar and Bablu Ram and from the motorcycle in question, 800 ml of countrymade liquor were recovered leading to registration of Chand P.S. Case No.135 of 2019.

It is submitted by learned counsel for the petitioner that the petitioner is the registered owner of the vehicle in question and certificate of registration has been brought on record as Annexure-2 to the writ application and the vehicle is rotting under the open



sky. Learned counsel for the petitioner further submits that the final order dated 10.11.2019 has been passed in Confiscation Case No.119 of 2019 by the Collector-cum-District Magistrate, Kaimur at Bhabhua, as contained Annexure-3 to this writ application and the motorcycle in question has already been confiscated.

Learned counsel for the State submits that since the final order of confiscation has been passed, hence the application has now become infructuous and the petitioner should prefer an Appeal against the said order of confiscation.

Having considered the rival submissions made by the parties, we are of the view that the final order having been passed in confiscation proceeding, the application has now become infructuous. Petitioner is now no longer the owner of the vehicle in question and in view of the provision under Section 61 of the Bihar Prohibition and Excise Act, the property has already been vested in the State of Bihar. Since there is a provision of Appeal under Section 92(2) under Chapter IX of the Act before the Excise Commissioner against the order of the Collector, the petitioner is at liberty to avail, if so advised, the alternative remedy of appeal.

It is well settled law that exercise of jurisdiction under Article 226 of the Constitution of India is discretionary in nature



having self imposed restriction has to be sparingly exercised where alternative and efficacious remedy is available.

However, the discretionary jurisdiction under Article 226 can be exercised in spite of availability of alternative remedy in exceptional circumstances only, which have been explained by Supreme Court in the case of **Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Ors.**, reported in **(1998) 8 Supreme Court Cases 1.**

In view of the discussion made above, we do not consider the present case within the exceptional circumstances as enumerated in the case of **Whirlpool Corporation (supra)**. Accordingly, we dispose of the present writ application with a liberty to the petitioner to file Appeal, along with petition for condoning the delay in filing the Appeal, within four weeks before the Excise Commissioner, Government of Bihar, Patna. If any such Appeal is filed on behalf of the appellant then the learned Appellate Authority (Excise Commissioner) may consider to condone the delay, in view of the fact that the writ application was pending before this Court and dispose of the appeal within a further period of three months after giving opportunities to both sides in accordance with law.



It is made clear that we have not expressed any opinion on the merit of the case. The petitioner will be at liberty to raise all his contentions before the appellate authority.

Accordingly, with the liberty aforesaid, this writ application is disposed of.

(Dinesh Kumar Singh, J)

sanjeev/-

(Anil Kumar Sinha, J)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.03.2020
Transmission Date	NA

