

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2649 of 2020

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Pinki Devi, W/o Sanjay Gupta, R/o Village- I.T.I. Stalin Nagar Digha Ghat,
P.S.- Digha, District- Patna

.. ... Petitioner/s

Versus

1. The State of Bihar the Chief Secretary, Govt. of Bihar, Patna
2. The Principal Secretary, Department of Home, Bihar Old Secretariat, Patna-1
3. The Principal Secretary, Department of Excise, Bihar Old Secretariat, Patna-1
4. The Excise Commissioner, Patna, Bihar
5. The Collector cum District Magistrate, Nawada
6. The Superintendent of Police, Nawada
7. The Excise Superintendent Nawada
8. The Station House Officer cum-in-Charge Town P.S. Nawada in the District - Nawada

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arjun Prasad
For the Respondent/s : Ms. Manisha Singh AC to GP 7

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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 06-02-2020 Heard Mr. Arjun Prasad, learned counsel for the petitioner and Ms. Manisha Singh, learned A.C. to SC 5 for the respondents.

Since the matter relates to release of Maruti Wagon R Car in a case of drunk driving, with the consent of the parties, this writ application is being heard on merits and disposed at



this stage itself.

The present writ application has been filed for release of Maruti Wagon R VXI Car, bearing Registration No. BR01DC-0838, seized in connection with Nawada Town Police Station Case No. 1317 of 2019, registered for the offences punishable under Sections 337 and 279 of the Indian Penal Code and Sections 37(b)(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 reads as under:-

“(i) For issuance of appropriate writ in nature of mandamus seeking direction to the respondent authorities to release her Vehicle four wheeler Vehicle MARUTI WAGEN R VX1 BSIV having B CHOLATE Colour and its registration No. BR01DC0838 Engine No. K10BN7841991 and Chasis No. MA3EWDE1S00B58550. The above article has been seized in connection with Nagar P.S. Case No. 1317/2019 dated 10/11/2019 Under Nawada District registered under Section 337/279 I.P.C. and 37(b)(c) Bihar Prohibition and Excise (Amendment) Act 2018.

(ii) For the issuance of appropriate writ in nature of mandamus seeking direction to



respondents to stop proceeding against this vehicle.”

The prosecution case got initiated on the basis of the written report of Dheeraj Kumar, Sub Inspector of Police, Nawada Town Police Station, submitted to the S.H.O., Nawada Town Police Station, to the effect that on 10.11.2019, at 7:10 PM, during patrolling, the informant along with other police official, saw a car with broken windshield coming, subsequently it was intercepted and three persons were found sitting in the vehicle, which was being negligently driven by a person, who disclosed his name as Sanjay Gupta and other two persons disclosed their name as Santosh Kumar and Rohit Kumar and they admitted that they had consumed liquor in the State of Jharkhand and on the way, they dashed the car on a motorcycle and as a result, windshield of the car got broken. Subsequently, breath analyser test was conducted which was found positive, leading to the registration of Nawada Town Police Station Case No. 1317 of 2019 for the offences punishable under Sections 279 and 337 of the Indian Penal Code and Sections 37 (b)(c) of the Bihar Excise and Prohibition Act, 2016 as amended by the Amendment Act 8 of 2018.

It is submitted on behalf of the petitioner that the



vehicle in question, has been kept under open sky in the premises of Nawada Town Police Station and it is rotting. It is further submitted that the petitioner is the registered owner of the vehicle in question and certificate of registration of the vehicle has been brought on record, as Annexure 1 to the writ petition. The petitioner is a lady and she was not driving the vehicle in question at the time of its seizure and hence, she cannot be held liable in this case. It is further submitted on behalf of the petitioner that there is no likelihood of the trial being concluded in near future, due to the huge pendency of the cases under the provisions of the Act. The petitioner is ready to produce the vehicle in question as and when directed. The petitioner has not received any notice under Section 58(i) of the Act and statement to this effect has been made in paragraph 11 of the writ petition.

It is submitted by learned Counsel for the respondents-State that all the three persons including the driver of the vehicle, were in drunken condition and they were put to breath analyzer test, which was found positive, hence, the case has rightly been registered under the provisions of the Act and consequently the vehicle has been seized.

Having heard learned Counsel for the parties and from



perusal of the material on record, particularly, First Information Report, it appears that the petitioner has not been made an accused and she was also not in the car at the time of seizure and accordingly the offences alleged are not made out particularly under the provisions of Act. Section 37(b) and (c) of the Act against the petitioner which mandate the penalty for consuming liquor either in the state of drunkenness or create nuisance at any place including his own house and, thus, both the offences are not made out against the petitioner.

Section 56 of the Act stipulates the things which are liable for confiscation proceedings. Section 56(d) of the Act reads as under:-

“(d) any animal, vehicle, vessel or other conveyance used for carrying the same.”

The above quoted provision of the Act suggests that any animal, vehicle, vessel or other conveyance is liable for confiscation if it is used for carrying any intoxicant or liquor. It is not the case of the prosecution that the vehicle in question has been used for carrying the intoxicant or liquor.

In the circumstances, allowing the vehicle to keep in the seized condition leaving it to reduce to a junk is violative of mandate of the Supreme Court, in the cases of **Sunderbhai**



Ambalal Desai Vs. State of Gujrat and other, reported in **(2002) 10 SCC 283** and **General Insurance Council and Ors. Vs. State of Andhara Pradesh and Ors.**, reported in **(2010) 6 SCC 768**.

However, it is admitted position that the confiscation proceeding has not been initiated moreover, more than two lakh cases have been registered in the State of Bihar, there is no likelihood of the trial being concluded in near future, we are constrained to direct that the vehicle in question i.e. Maruti, Wagon R VXi bearing registration no. BR01DC0838 be released provisionally till the conclusion of the trial, if any, to the satisfaction of learned Additional Sessions Judge-II -cum- Special Judge, Excise, Nawada, or if the confiscation proceeding is initiated in the meantime to the satisfaction of Collector, Nawada on the following conditions:-

(I) The petitioner will produce the proof of valid certificate of registration/ownership in his favour including the insurance papers;

(II) The petitioner will furnish surety bond of Rs.50,000/- but not in the form of bank guarantee or cash, with two sureties of the like amount to the satisfaction of the learned Additional Sessions Judge-II -cum- Special Judge, Excise,



Nawada or the Collector, Nawada, 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 Additional Sessions Judge-II -cum- Special Judge, Excise,



Nawada 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)

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