

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2851 of 2020

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Raja Kumar, Son of Vijay Singh, resident of village - Chhota Telpa, Rawal Tola, P.S.- Chapra Town, District- Saran at Chapara.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Registration, Excise and Prohibition Department, government of Bihar, Patna.
2. The District Magistrate-Cum-Collector, Saran at Chapra.
3. The Assistant Excise Commissioner, Saran at Chapra.
4. The Superintendent of Excise, Saran at Chapra.
5. The Superintendent of Police, Saran at Chapra.
6. The Vehicle Inspector, Saran at Chapra.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Dewendra Narayan Singh
For the Respondent/s : Mr.Kumar Manish (Sc5)

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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 20-02-2020 Heard learned counsels for the parties.

The present writ application has been filed for release of Mahindra Swaraj Tractor of the petitioner bearing Registration No. BR-04GA-4140, which has been seized in connection with Bhagwan Bazar P.S. Case No. 615 of 2019, registered for the offences punishable under Section 279 of the IPC, Section 185 of the Motor Vehicle Act and Section 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 prayer as is contained in paragraph no.1



of the writ application, reads as follows:-

“(i) For release of Mahindra Swaraj Tractor vehicle bearing its Registration Number as BR-04GA-4140, Engine No. 391355/SZF05651 and Chassis No.WZTF28428132445 of the petitioner which has been seized in connection with Bhagwan Bazar P.S. Case No. 615 of 2019 registered for the offences punishable under Sections 279 of the I.P.C., 185 of the Motor Vehicle Act and 37(c) of the Bihar Prohibition and Excise Act, 2016 on 27.12.2019, seized for the alleged violation of Excise Laws

(ii) Also for restraining the respondent authorities from initiation of confiscation proceeding against petitioner's seized Mahindra Swaraj Tractor vehicle bearing its Registration Number as BR-04GA-4140, Engine No. 391355/SZF05651 and Chassis No.WZTF28428132445, seized in connection with Bhagwan Bazar P.S. Case No. 615 of 2019.”

The prosecution case, as per the written statement of S.I. Nandjee Singh of Bhagwan Bazar Police station submitted to the SHO, Bhagwan Bazar police station is to the effect that on 27.12.2019 at 1.20 P.M., he saw a blue coloured tractor being driven in a reckless manner



whereupon the tractor in question was intercepted and it was found that it was being driven by one Sumaru Sah alias Jitendra Sah. Subsequently, the driver was put on breath analyzer test which was found positive and consequently, Bhagwan Bazar P.S. Case No. 615 of 2019 was registered.

It is submitted by learned counsel for the petitioner that the petitioner is the registered owner of the tractor in question and certificate of registration has been brought on record as Annexure-2 to the writ application. The confiscation proceeding has not been initiated till date. It is further submitted that it is a case of drunken driving, hence the tractor in question is not amenable to confiscation under Section 56 of the Act as Section 56(b) of the Act mandates the vehicle or carrier liable to be confiscated if it has been used for carrying liquor or intoxicant. There is no recovery of liquor from the tractor in question and the same is rotting under the open sky and till date, confiscation proceeding has not been initiated. The petitioner is ready to produce the vehicle before the concerned authority or before the Court as and when required.

Mr. Kumar Pankaj, learned AC to SC 5 submits that there is no recovery of liquor from the tractor in question



and prima facie, it is not liable for confiscation.

Section 37 of the Act which has been amended by Amendment Act 8 of 2018, prescribes penalty for consumption of liquor. Section 37(b) of the Act prescribes for penalty to any person if he is found drunk or in a state of drunkenness at any place whereas Section 37(c) prescribes penalty if someone drinks liquor and creates nuisance or violence at any place including in his own house. Section 37 of the Act reads as follows:

“37. Penalty for consumption of liquor.—Whoever, in contravention of this Act or the rules, notification or order made thereunder -

(a) consumes liquor or intoxicant in any place; or

(b) is found drunk or in a state of drunkenness at any place; or

(c) drinks and creates nuisance or violence at any place including in his own house or premises; or

(d) permits or facilitates drunkenness or allows assembly of drunken elements in his own house or premises;

shall be punishable,

(1) in case of an offence falling under clause (a) and (b), for the first offence only with fine which shall not be less than Fifty thousand



rupees or in lieu thereof sentence for a period of three months imprisonment but for subsequent offence falling under clause (a) and (b), shall be punishable with a term which shall not be less than one year but may extend to five years and with fine, which may extend to one lakh rupees.

(2) In case of an offence falling under clause (c) and (d), with a term which shall not be less than five years but which may extend to ten years and with fine, which shall not be less than one lakh rupees which may extend to five lakh rupees.”

Section 56(b) of the Act clearly mandates that the vehicle would be liable to confiscation only when intoxicant or liquor is being carried through it. There is no accusation that liquor was being carried on the vehicle in question. Hence, if the seized vehicle was not liable for confiscation under Section 56(b) of the Act, then there is no requirement of transmitting a report by the seizing officer or detaining officer under Section 58 (1) of the Act to the Collector for initiation of the confiscation proceeding.

A Division Bench of this Court while considering the case of drunken driving in the case of Diwakar Kumar Singh Vs. The State of Bihar and Ors., 2018(3) PLJR 403, held that it shall be mandatory for the confiscating authority



to decide it as preliminary issue before passing final order in confiscation proceeding, when the person is found in drunken condition but no liquor is seized nor the vehicle is used for transportation of the liquor as to whether in such a condition the vehicle is liable for confiscation under Section 56 of the Act. Relevant portion of the order reads as follows:

“.....That apart, in the confiscation proceedings, the confiscating authority shall take note of the provisions of Section 56 of the Bihar Prohibition and Excise Act, 2016 and record a positive finding after hearing the petitioner as to whether when the petitioner is found or the vehicle is found to be used by a person in drunken condition and no liquor is seized from the vehicle or when the vehicle is not used for transportation of liquor, whether the provision of Section 56 of the Act will apply. It shall be mandatory for the confiscating authority to decide this issue before passing any order on the confiscation proceedings. The confiscating authority shall consider the provision of Section 56 of the Act, apply his mind and pass a speaking order with regard to confiscation initiated. Without deciding the aforesaid issue as a preliminary issue, further proceedings in the confiscation proceedings shall be prohibited.”



Since 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 under the Act in question, there is no likelihood of the trial being concluded in near future. However, learned counsel for the respondents has no objection with regard to the provisional release of the vehicle in question, we direct that the same be released provisionally till the conclusion of the trial on the following conditions to the satisfaction of ADJ II-cum-Special Judge(Excise), Saran:

(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 A.D.J.-IICum-Special Judge, Excise, Saran;

(II) The petitioner will furnish bank guarantee of rupees One lac, 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 of release of the tractor in question will be done by the court below 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 the accusation 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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