

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3132 of 2020

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Dharmendra Kumar Mukhiya, son of Gagandev Mukhiya, resident of village-
Hasuahan, P.S.- Motihari Muffasil, District- East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principle Secretary, Registration, Excise and prohibition Department, Government of Bihar, Patna.
2. The Principle Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
3. The Collector-Cum-District Magistrate, East Champaran, Motihari.
4. The Superintendent of Police, East Champaran, Motihari.
5. The Superintendent of Excise, East Champaran, Motihari.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Umesh Chandra Verma, Adv. Mrs. Rashmi Jha, Adv.
For the Respondent/s	:	Mr. Kumar Manish (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 : 26-02-2020

Heard Mrs. Rashmi Jha, learned counsel for the
petitioner and Mr. Kumar Manish, learned SC-5 for the
respondent-State.

The present writ application has been filed for
release of Super Splendor motorcycle of the petitioner, bearing
Registration No. BR05AE9825, which has been seized in
connection with Motihari Muffasil P.S. Case No. 555 of 2019,
registered for the offences punishable under Sections 272 and
273 of the Indian Penal Code and 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, as stipulated in paragraph no.1 of the writ application reads as follows :-

“1(i) To issue an appropriate writ/order/direction, in the nature of writ of Mandamus directing the respondent Collector to release Super Splendor motorcycle bearing Registration No. BR05AE9825, which has been illegally seized by the S.I. in Motihari Muffasil P.S. Case No. 555 of 2019 dated 27.11.2019 instituted for the offences under sections 272, 273 of the Indian Penal Code and 30(a) of the Bihar Prohibition and Excise Act, 2016.”

The prosecution case is to the effect that on secret information that liquor is being transported on a motorcycle, the said motorcycle was intercepted and from the same, 25 litres of Indian Made Foreign Liquor were recovered, leading to registration of Motihari Muffasil P.S. Case No. 555 of 2019.

It is submitted by learned counsel for the petitioner that the petitioner claims to be the registered owner of the vehicle in question. The copy of the registration certificate of the vehicle in question has been brought on record as Annexure-2. The vehicle in question is rotting under the open sky and there is no likelihood of trial being concluded in near future. It



is further submitted that after filing of the present application, confiscation proceeding has mechanically been initiated to frustrate the claim of the petitioner.

It is submitted by learned S.C.-5 that confiscation proceeding, vide Confiscation Case No. 69 of 2020 has already been initiated and notice has been issued to the petitioner and the proceeding of the confiscation case would be concluded within a time frame.

Considering the settled law that once the confiscation proceeding is initiated, the exercise of discretionary jurisdiction under Article 226 of the Constitution of India, having self imposed restriction can be exercised in certain exceptional or monstrous situation, such as in case of violation of fundamental right, gross violation of principle of natural justice or in case of impugned order or proceedings being without jurisdiction or vires of any Act is under challenge, which has also been deprecated by the Apex Court in the case of State of Karnataka Vs. K. Krishnan, (2000) 7 Supreme Court Cases 80 and in the case of State of West Bengal and Ors. Vs. Sujit Kumar Rana, (2004) 4 Supreme Court Cases 129, as well as by a Full Bench of this Court in the case of Baleshwar Roy Vs. The State of Bihar and Ors , 2018(4) PLJR 970.



Since the vehicle in question was seized on 27.11.2019, it is expected from the Collector/District Magistrate, Patna to conclude the proceeding of the Excise Confiscation Case No. 69 of 2020 and dispose of the same by a reasoned and speaking order within a period of six weeks 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.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

Amrendra/-

AFR/NAFR	
CAV DATE	
Uploading Date	19.03.2020
Transmission Date	

