

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5292 of 2020

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Kanhaiya Sah S/o Dhanu Sah, R/o Village-Dhumnagar Ward no 3, PS
Sikarpur, District West Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary Excise Department, New Secretariat Patna.
2. The District Magistrate-Cum-Collector West Champaran.
3. The Superintendent of Police West Champaran.
4. The Excise Superintendent, West Champaran.
5. The Station house officer, PS Chutarawat, District West Champaran.
6. The Investigating Officer Chautarawa PS Case no 17/2020, District West Champaran.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Chandra Kant
For the Respondent/s : Mr.Vivek Prasad (Gp7)

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 13-07-2020

Heard learned counsel for the petitioner and learned
counsel for the State.

Petitioner has prayed for the following relief:-

“For issuance of writ of mandamus directing respondents to release the vehicle of petitioner Bolero Pick Up bearing registration no. BR05GB4814, which has been seized in Chautarawa PS Case No. 17/2020 for the u/s 3(C) of Bihar Prohibition & Excise Act.

Allegation is of driving the Bolero vehicle in a
drunken condition for which Chautarawa PS Case No. 17/2020
for the offence punishable u/s 37 (C) of Bihar Prohibition &



Excise Act was registered.

Petitioner claims to be owner of the vehicle and since there is no recovery of any illicit liquor and allegation is of driving vehicle in a drunken condition as such, vehicle is not liable for confiscation.

It is submitted that Confiscation Case has been initiated by the District Collector, being Confiscation Case No. 1/2018-19, which is still pending.

It has been submitted by learned counsel for the State that in case of no recovery of any illicit liquor from the vehicle, the vehicle is not liable for confiscation and same has been decided by the Excise Commissioner, Bihar, Patna, in appeal of confiscation being **Case No. 107 of 2019 (arising out of Tariyani P.S. Case No. 184 of 2018) titled as Ajit Rai & Ors Vs. The Collector, Sheohar.** The operative part of the order reads as follows:-

“Hence, even as per the substituted Section 32 of the Amended Act, the presumption is only vis-a-vis the person, whose vehicle is liable to confiscation and such vehicle can be made liable to confiscation only when it is used, as per Section 56(d), for carrying or transporting the prohibited article under the Act. Thus, the transportation of prohibited article under the Act, 2016, is a *sine qua non* for a vehicle to be confiscated on the passing of an order by the District Collector.

From the aforesaid Judgment and Order passed by the Hon’ble High Court of Patna it is well established that the transportation of prohibited article



under the Act, 2016 is a sine qua non for a vehicle to be confiscated on the passing of an order by the District Collector. Therefore the confiscation order passed by the learned Collector, Sheohar, in confiscation case no. 107 of 2019 on 09.12.2019 is hereby ordered to be modified to the extent that the three motorcycles bearing registration no. BR 06BJ 6591; BR 06BL 5384 and BR 55 4036 will be released after verifying the document related to registration and owners of the said vehicle as there is no recovery of liquor from these motorcycles.

Let the copy of this order be communicated to all District Magistrates, Superintendent of Police and Assistant Commissioner/Superintendent of Prohibition for information and necessary action.”

The District Collector, West Champaran, is directed to decide the confiscation proceeding on the basis of order passed by the Excise Commissioner as referred above.

The writ petition is accordingly, disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

ranjan/-

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

