

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No.972 of 2020

In

Civil Writ Jurisdiction Case No.283 of 2020

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Ravindra Kumar @ Ravindra Kumar Yadav Son of Upendra Yadav, Resident of Village-Dudhela, P.S. Dighiya, District-Supaul.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Excise and Prohibition, Govt. of Bihar, Old Secretariat, patna
2. The District Magistrate, Supaul
3. The Superintendent of Police, Supaul
4. The S.H.O. Kunauli Police Station, Supaul, Bihar

... .. Opposite Parties

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Appearance :

For the Petitioner/s : Mr.Gagan Deo Yadav, Adv.
For the Opposite Party/s : Mr.Vikash Kumar (Sc 11)

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

2 16-12-2020 Heard Mr. Gagan Deo Yadav, learned counsel for the petitioner and Mr. Vikash Kumar, learned counsel for the State.

2. By way of the instant application preferred under Article 226 of the Constitution of India, the petitioner seeks modification in the order dated 13.01.2020 passed in CWJC No. 283 of 2020.

3. CWJC No. 283 of 2020 was preferred by the petitioner with a prayer for a direction to the respondents to



release Hero Extreme Motorcycle bearing Registration No. BR50F-3766, which has been seized in connection with Kunauli (Dagmara O.P.) P.S. Case No.24 of 2019, registered under Section 30(a) of Bihar Prohibition and Excise Act, 2016 as amended by the Amendment Act 8 of 2018.

4. The relief claimed by the petitioner in para 1 of the writ petition reads as under :-

“1. That the present Civil Writ petition is being filed for release of vehicle Hero Extreme Motorcycle Registration No.BR50F-3766, Chasis No. MBLKC12EMGGE01402, Engine No. KC12EFGGE01812, belongs to the petitioner, which has been seized by Kanauli (Dagmara O.P.) Police Station (Arising out of Kunauli (Dagmara) P.S. Case No.24 of 2019 dated 18.05.2019 registered under Sections 30(a) of the Bihar Prohibition and Excise Act, 2016, pending in the Court of learned A.D.J.-II-cum- Special Judge (Excise), Madhubani. The matter for confiscation process has not been initiated against the vehicle which is lying in the open sky without any care.”

5. The operative part of the aforesaid order dated 13.01.2020 reads as under :-

“We do not consider the present case within



the exceptional circumstances as enumerated in the case of Whirlpool Corporation (supra). 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 his all contentions before the appellate authority.

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

6. Learned counsel appearing for the petitioner submitted that in para 1 of the writ petition it was wrongly mentioned that the case is pending in the court of learned A.D.J.-II-cum- Special Judge (Excise), Madhubani. According to him, the criminal case is pending in the court of ADJ-II-cum-



Special Judge (Excise), Supaul. He contended that at page 2 of the order dated 13.01.2020, para 1 of the writ petition has been quoted wherein also it is recorded that the criminal case is pending at Madhubani. He submitted that the word 'Madhubani' at page 2 of the aforesaid order be modified and substituted by the word 'Supaul'.

7. On query made by the Court, he fairly admitted that till date the petitioner has not preferred appeal before the appellate authority i.e. the Excise Commissioner, Government of Bihar, Patna as directed by this Court vide order dated 13.01.2020 passed in CWJC No. 283 of 2020.

8. Since this Court had disposed of the writ petition with 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 and it was further observed that in case such an appeal is filed then the appellate authority may consider to condone the delay and dispose of the appeal within a further period of three months after giving opportunities to both sides in accordance with law and, admittedly, the petitioner did not prefer appeal within the stipulated period of four weeks, we see no reason to modify the order dated 13.01.2020 passed in CWJC No. 283 of



2020.

9. Accordingly, the application is dismissed.

(Ashwani Kumar Singh, J)

(Anil Kumar Sinha, J)

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