

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6162 of 2020

Rajesh Kumar Yadav @ Rajesh Yadav S/o Dudh Nath Roy R/o- Mohalla-
Barmasia, Mirchaibari, P.S. Katihar Sahayak, Distt.- Katihar.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Excise Department,
Govt. of Bihar, Patna.
2. The District Magistrate Katihar.
3. The Excise Superintendent Katihar, P.S. and Distt.- Katihar.
4. The Excise Inspector Katihar, P.S. and Distt.- Katihar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Dr. Anjani Pd. Singh
For the Respondent/s	:	Mr.Lalit Kishore AG
		Mr. Vikash Kumar, SC 11

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

(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

5 26-06-2020

Heard learned counsels for the parties.

The present writ application has been filed for release of the Hero Motorcycle bearing Registration no. BR 39K-5696, seized in connection with Katihar Town P.S. Case No.80 of 2020, registered for the offences punishable under Section 30(a) of Bihar Prohibition and Excise Act, 2016, as amended by Amendment Act 8 of 2018 (hereinafter referred to as 'the Act').

The relief claimed by the petitioner in paragraph 1 of the writ petition reads as follows:

“That, this is an application for issuance of an appropriate writ(s), order(s),



direction(s) to the respondents to release the Hero Motorcycle bearing registration no. BR-39K 5696, Model-Glamour, Chasis no. MBLJA06ACCGLO4230, Engine No.- JA06EJCGLO5049, Registration dated 03.09.2013 which is valid till 02.09,2028 and road tax has been paid up to 15 year in favour of the petitioner which has been seized in connection with Katihar Town P.S. Case No. 80/2020 dated 31.01.2020 for the alleged offence under section 30(a) of Bihar Prohibition and Excise Act.”

The factual matrix of the case as per the written report of SHO, Sahayak Police Station submitted to the SHO, Katihar Town Police Station, is to the effect that on 31.1.2020, during evening patrolling, the motorcycle in question was intercepted from which, 3 litres of Indian Made Foreign Liquor was recovered, leading to registration of Katihar Town P.S. Case No.80 of 2020.

It is submitted by learned counsel for the petitioner that the petitioner is the bonafide owner of the vehicle in question and the certificate of registration of the said vehicle has been brought on record, as contained in Annexure 1 to the writ application. It is further submitted that the vehicle in question is rotting in open area.



A counter affidavit has been filed on behalf of the respondents stipulating therein that the case was registered on 31.1.2020 but due to lockdown on account of present pandemic Covid-19, the confiscation proceeding could not be initiated. However, now, the same has been initiated vide Confiscation Case No. 60 of 2019-20 and notice has been issued to the petitioner fixing the matter on 4.7.2020. Hence, it is submitted by learned S.C. 11 that the vehicle in question may not be released. However, the Collector, Katihar will dispose of the confiscation proceeding within a time frame.

Learned counsel for the petitioner, however, submits that after filing of the writ application, hurriedly the confiscation proceeding has been initiated.

Even if the vehicle is not liable for confiscation, the Special Judge under the Act in view of the bar under Section 60 of the Act, does not have the jurisdiction to direct for the release of the seized vehicle. However, this Court is of the considered view that such bar will not operate in exercise of jurisdiction under Article 226 of the Constitution of India, since such power is very much required to be exercised in the given prevailing alarmingly monstrous situation. Considering the view taken by the Apex Court in the case of



State of Karnataka Vs. K. Krishnan, reported in (2000) 7 Supreme Court Cases 80 and in the case of State of West Bengal and Ors. Vs. Sujit Kumar Rana, reported in (2004) 4 Supreme Court Cases 129, a Full Bench of this Court in the case of Baleshwar Roy Vs. The State of Bihar and Ors , 2018(4) PLJR 970, held as follows:

“62. It may, however, be added that Article 226 of the Constitution of India provides power to the High Court to issue writs to any person or authority, including in appropriate cases, any Government, any order or writs (including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part-III and for any other purpose). Similarly Article 227 of the Constitution of India provides the power of superintendence over all Courts and Tribunals throughout the territories in relation to which any High Court exercises its jurisdiction. The powers of the High Court under Articles 226 and 227 of the Constitution of India cannot be curtailed under any circumstance, as the power flows from the Constitution itself. No statutory bar can affect the power of the High Court under Articles 226 and 227 of the Constitution of India.

63. Despite such wide and untrammelled powers, without any circumscription by



external restrictions, the Courts have evolved certain self-imposed limits while exercising these powers. The High Courts, normally, would not go beyond justified inhibitions under any Statute except where there is a complete jettisoning of rule of law or under exceptional circumstances which demand timely judicial interdict. This inhibition is basically ordained, keeping in mind that there is a national weal behind any valid piece of Legislation incorporating and inhering in itself the social objective behind any Legislation. Though, no limitations or fetters have been put on the powers of the High Court under Articles 226 and 227 of the Constitution of India, as the High Courts perform as sentinel on the qui-vive, but such power is not to be exercised casually and without coming to the conclusion that non-exercise of such power would lead to positive injustice. Times without number, it has been held by the High Courts that only under condition of a person establishing that substantial injustice has or is likely to ensue, such extraordinary powers can be exercised. It needs no adumbration by this date that the plenary powers of the High Court have only to be exercised in the interest of justice.

64. Thus, an order of release may be passed under Article 226/227 of the Constitution of India, even pending confiscation proceedings, but only when it is established before the Court that the procedure prescribed and the law in that regard



has been completely flouted and that there is complete violation of the procedure prescribed for confiscation, viz., notice to the offender before confiscation, allowing him opportunity of giving written representation and affording hearing on the issue to him and that such injustice cannot be remedied without the exercise of the extraordinary power.

65. Needless to state that under Article 226 of the Constitution of India, the Court will not go into the disputed question of facts.

66. Thus, the powers directing for release of the vehicles or goods, during the pendency of the confiscation, can only be sparingly exercised under monstrous situations and circumstances when injustice occurs because of non-fulfillment of the conditions for confiscation.”

Considering the fact that the confiscation proceeding has been initiated, it is expected from the Collector, Katihar to conclude the confiscation proceeding being Confiscation Case No. 60 of 2019-20 strictly in accordance with law within a period of four weeks from the date of receipt/production of a copy of this order after giving due opportunity of hearing to all affected persons. The petitioner is also expected to file his response on or before 4.7.2020, which is the date fixed in the confiscation proceeding.



This writ application is, accordingly, disposed of.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

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