

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7718 of 2020

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1. Niraj Kumar Son of Shambhu Yadav Resident of Village- Baraliya Block, P.S.- Tankuppa, District- Gaya.
 2. Mithilesh Kumar Ojha Son of R.B. Ojha Resident of Village- 20A Abdul Hamid Street, Near Great Eastern Hotel, P.S.- District- Kolkata.

... .. Petitioner/s

Versus

1. The State of Bihar Through Principal Secretary, Excise, Government of Bihar, Patna.
2. The District Magistrate Gaya.
3. The Superintendent of Excise Gaya.
4. The Superintendent of Police Gaya.
5. The S.H.O. Police Gaya.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Vijay Anand
For the Respondent/s : Mr.Vikash Kumar, SC 11

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

(The proceedings of the Court are being conducted through Video Conferencing and the Advocates joined the proceedings through Video Conferencing from their residence.)

Date : 17-09-2020

Heard the parties.

Petitioners have prayed for following relief:-

1. "For quashing the seizure as well as pray for release of Swift Desire car bearing registration No.WB04F-4096 in favour of petitioner in Fatehpur P.S. Case No.95/2020 registered u/s 30(a), (d)/32(2) of Bihar Prohibition and Excise Act, 2016 to the satisfaction of learned Special Judge, Excise, Gaya.

Informant is a police officer who in his written complaint



has alleged that on 19.5.2020 while he was on patrolling duty along with other police personnel, he received an information from officer-in-charge that one Maruti Suzuki car was coming from Jharkhand in which Mahua flower is kept and he saw a white coloured Maruti Suzuki Swift Dzire car coming from Jharkhand and on seeing police, the driver fled away leaving the car and on search of car, Mahua flowers kept in 7 jute bags each containing 50 kg. was recovered and same was seized and FIR was instituted against the owner and driver of the seized car giving rise to Fatehpur P.S. Case No.95/2020 registered u/s 30(a), (d)/32(2) of Bihar Prohibition and Excise Act, 2016.

Division Bench of this Court in C.W.J.C. No. 23163 of 2018 (Umesh Kumar @ Umesh Mahto versus The State of Bihar and Ors. and other analogues matters) has held as follows:-

“Since ‘the Mahua Flowers Rules’ allows any person to remain in possession of Mahua Flowers to the extent of 5 kg. without any licence and any quantity in excess thereof, is to be done under a licence, the quantity possessed by the respective petitioners in excess of 5 kg., without a licence, may be a statutory violation and thus capable of retention by the State Government but in absence of any penal action so provided under ‘the Rules’ or ‘the Act for



possession of these flowers exceeding the limit, even if the State Government would be within its jurisdiction to retain the same, the confiscation proceedings cannot be allowed to continue.

In result, we hold that the confiscation proceedings, if any, initiated against the petitioners for alleged violation of Section 3 of ‘the Mahua Flowers Rules’ read alongside the provisions of ‘the Act’ for possession of Mahua Flowers exceeding 5 kgs., is without sanction of law and consequentially the confiscation proceeding, if any, initiated against the petitioners shall stand quashed and the vehicles seized, if not already released, shall be released in favour of the owner on production of ownership papers.”

In view of Division Bench judgment as referred above, the seized car is not liable for confiscation and if any confiscation proceeding has been initiated against the seized vehicle, same is directed to be dropped and the District Magistrate / Confiscating Officer, Gaya is directed to release the vehicle in favour of registered owner of the vehicle after due identification of ownership of the vehicle and on production of ownership and registration document with respect to vehicle in question in his name. However, 350 kg. seized Mahua flower cannot be released and same to be destroyed as per prescribed



procedure.

The writ petition is allowed.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	26.09.2020
Transmission Date	NA

