

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11933 of 2017

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Tinku Kumar @ Tinku Son of Late Nand Kishore Yadav, Resident of Village
Post- Khajuri Bhargama, P.S.- Bhargama, District- Araria.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The District Magistrate, Banka.
3. The S.S.P. Excise Department, Banka.
4. The Superintendent of Police, Banka.
5. The Superintendent of Excise, Banka.
6. The S.H.O. Rajaun Police Station, District- Banka.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ranjeet Kumar

For the Respondent/s : Mr.Anil Kr. Sinha-Ga1

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

3 18-01-2020 Heard learned counsel for the petitioner and the
respondents.

The petitioner prays for setting aside the order dated



10.6.2017 passed by the District Magistrate, Banka, in Confiscation No. 112 of 2016-17, whereby vehicle, namely, Scorpio, bearing Registration No. BR11X-3386 has been confiscated and further direction to the respondents to release the vehicle seized in connection with Rajaun P.S. Case No. 328 of 2016 for the offences punishable under Section 47(e)/53(c)/57(b) of the Bihar Prohibition and Excise Act, 2016.

Learned counsel for the petitioner invites our attention to the order dated 18.01.2020 passed in CWJC No.3245 of 2017, titled as Manish Kumar Chaudhary Versus The State of Bihar & Ors., and wants the petition to be disposed of in terms thereof.

With the consent of learned counsel for the parties, the writ petition stands disposed of in the following terms.

Learned counsel for the petitioner states that petitioner shall be content if directions are issued to the following effect:- (a) Interim order for release of the property (vehicle/house/land/shop etc.) be allowed to be continued to be in operation till such time the proceedings envisaged under the provision of the Bihar Prohibition and Excise Act, 2016 are not concluded; (b) petitioner shall fully cooperate in all such proceedings contemplated under the said Act and not take any



unnecessary adjournment; (c) also if the proceedings for confiscation stands culminated, he may be allowed to file the appeal within a reasonable time with limitation not coming in the way of decision on merits; (d) also the petitioner be allowed to take recourse to such remedies, as are permissible in law, with respect to the very same cause of action, once the decision is rendered by Hon'ble the Apex Court in Special Leave to Appeal (C) No.29749 of 2016, titled as State of Bihar & Ors. etc. Vs. Confederation of Indian Alcoholic Beverage Companies & Anr. Etc. and analogous cases.

Learned counsel appearing for the State has no objection to the prayer of the petitioner being allowed, clarifying that perhaps in certain cases proceedings of confiscation may not have been initiated or concluded and that in certain cases appeals may have been filed but not concluded. Depending upon the stage of each case, if the petitioner(s) were to fully cooperate and promptly initiate action as contemplated under the Act, State shall not raise the issue of limitation and have the matter decided expeditiously.

As such, as mutually prayed for, the present writ petition is being disposed of on the following mutually agreed terms:-



- (a) Interim order dated 25.08.2017 passed in the instant writ petition, directing release of the property (vehicle/land/house/shop etc.) shall continue to remain in operation till such time proceedings up to the stage of initiation of confiscatory proceedings and its culmination as also filing and culmination of the proceedings in the appeal, as the case may be. This however, would be subject to the petitioner(s) fully cooperating and not transferring/alienating the property to any person or creating third party rights. It goes without saying that the property shall be maintained and retained in its original condition and not destroyed in any manner or its character changed.
- (b) Wherever proceedings for confiscation have not started, the Appropriate Authority constituted under the Act, shall positively initiate the same within a period of four weeks from today. In any event, petitioner undertakes to appear in the office of the concerned appropriate authority/the concerned District Magistrate, on the **10th of February, 2020** and apprise him of the passing of the order. The said Officer shall forthwith, and not later than four weeks from today, initiate the proceedings and after compliance of principles of natural justice, take a decision thereupon within a period of



two months.

- (c) In the event of the authority arriving at the conclusion, directing confiscation of the property, the petitioner shall positively file the appeal within the statutory period as envisaged under Section 92 of the Bihar Prohibition and Excise Act, 2016 and the appellate authority shall positively decide the same within a period of two months thereafter.
- (d) Wherever confiscatory proceedings already stand concluded and if the petitioner so desires, within four weeks from today or within the statutory period of limitation, as the case may be, positively file an appeal, which shall be adjudicated on its own merit. The issue of limitation shall not be raised by the State or come in the petitioner's way of decision on merits. The said proceedings shall positively be concluded within a period of two months from the date of filing.
- (e) Petitioner undertakes to fully cooperate in all such proceedings (confiscatory, Appeal, etc.) and shall not take any unnecessary adjournment.
- (f) Where appeal already stands filed, petitioner shall appear before the said Authority on the **20th February, 2020** and apprise him of the passing of the order. The Appellate Authority shall positively decide the same within a



period of two months thereafter.

- (g) With the decision in the appeal, it shall be open for either of the parties to take recourse to such remedies as are available in accordance with law, including approaching this Court, on the same and subsequent cause of action.
- (h) If the petitioner fails to cooperate, does not join, or makes an endeavour of procrastination, in any one of the proceedings referred to supra, it shall be open for the authority to take a decision with regard to the property (vehicle/house/land etc.), including taking back possession and putting it on sale in terms of the Act, with the interim order deemed to have been vacated.
- (i) If the appellant chooses not to prefer an appeal within the said statutory period or as directed herein, it shall be open for the authority to take a decision with regard to the property, including taking back possession and putting it on sale in terms of the Act and the interim order passed in the instant petition shall be deemed to have been vacated.
- (j) With the outcome of the Special Leave Petition (C) No.29749 of 2016, titled as State of Bihar & Ors. etc. Vs. Confederation of Indian Alcoholic Beverage Companies & Anr., parties, including the petitioner would be at liberty to take recourse to such remedies



as are permissible in law.

We have not expressed any opinion on the merits of the matter and all issues are left open.

The writ petition stands disposed of in the aforesaid terms.

No order as to costs.

(Sanjay Karol, CJ)

(Anil Kumar Upadhyay, J)

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