

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10116 of 2019

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Lalan Choudhary, Son of Jagdish Choudhary, Resident of Village- Darhar,
P.S.-Bahadurpur Laheriasarai, District-Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Old secretariat, Patna
2. The Principal Secretary, Department of Registration Excise and Prohibition,
Vikas Bhawan, New Secretariat, Bihar, Patna.
3. The Commissioner, Department of Registration Excise and Prohibition,
Vikas Bhawan, New secretariat, Bihar, Patna
4. The Collector-Cum-District Magistrate, Darbhanga.
5. The Senior Superintendent of Police, Darbhanga.
6. The Officer-in-Charge, Sadar Police Station, Darbhanga.
7. The In-Charge of Mabbi Oppi, Sadar Police Station, Darbhanga.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Shambhu Nath Jha, Advocate
For the Respondent/s : Mr.Vikash Kumar (Sc11)

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

Date : 22-06-2020

A prelude to the instant petition is the order dated 13th
February, 2018 passed by a Coordinate Bench of this Court in CWJC
No.2168 of 2018 titled as Lalan Choudhary Versus The State of Bihar
& Anr. Such order in toto reads as under: -

“13.02.20218 Respondents to file counter affidavit
within four weeks.



Having heard learned counsel for the parties, we find that a Pulsar Motorcycle bearing Registration No. BR072-9806 (Engine No. DHYRHA44443, Chassis No. MD2A11CYXHRA-08197) has been seized in connection with Excise Confiscation Case No. 176/2017 registered against the petitioner under Section 30(a) of the Bihar Prohibition and Excise Act, 2016 and Excise Appeal Case No. 176/2017 has been disposed of on 29.11.2017.

The question in respect to confiscation of vehicle by the concerned authorities has been referred to the Larger Bench in L.P.A. No. 1647 of 2015. Since the very issue is pending consideration before the Larger Bench, we deem it appropriate to order release of the vehicle in question, mentioned hereinabove, to the petitioner, if not already auctioned, on furnishing two surety bonds, within a period of one week from the date of submission of the surety bonds, to the satisfaction of the District Magistrate-cum-Collector, Darbhanga in connection with the aforementioned case, subject to the condition that the petitioner shall make available the vehicle in question before the authority concerned as and when required and shall also not alienate or deal with the vehicle in question in any manner so as to create a third party interest or prejudice the right of the State in confiscation proceeding.

List the matter for analogous hearing along with L.P.A. No. 1647 of 2015.”

It is not in dispute that pursuant to the said order, the appropriate authority constituted under the provision of the Bihar



Prohibition and Excise Act, 2016 (hereinafter referred to as the Act), passed an order dated 09th March 2018 directing the release of the vehicle, i.e. Motorcycle bearing Registration No. BR07Z-9806 (Engine No. DHYRHA44443, Chassis No. MD2A11CYXHRA-08197) seized in relation to Sadar (Mabbi O.P.) P.S. Case No.236 of 2017 dated 07.06.2017.

At this juncture, it be also observed that petitioner initiated proceedings for contempt, which was disposed of vide order dated 20th February, 2019 in Miscellaneous Jurisdiction Case No.2522 of 2018 arising out of Civil Writ Jurisdiction Case No.2168 of 2018 titled Lalan Choudhary @ Lalan Kumar Chaudhary Versus The State of Bihar & Anr. The operative portion thereof reads as under: -

“Having considered the submissions raised, we find that the factum of auction has been stated by the respondents to have taken place on 06th February, 2018. This fact was neither known to the Division Bench when the directions were issued on 13th February, 2018 nor does this fact appear to have been in the knowledge of the Collector when he passed the order on 09th March, 2018. The show cause does mention about the preparation of the documents of confiscation and auction, but no such documents have been filed along with the show cause.

We, in the above circumstances, find that there is no willful or deliberate disobedience, but at the same time, this does not take away the rights of the applicant to challenge the auction proceedings if there is any violation of the



statutory provision, for this the applicant shall be supplied copy of the documents pertaining to confiscation as well as auction within two weeks from today so that the applicant may avail of the remedy for challenging such proceedings before the appropriate forum.”

It is in this backdrop that the petitioner lays a challenge to the auction sale dated 06th February 2018 of the Motorcycle, subject matter of the earlier writ petition.

Allegedly, the vehicle was involved in the commission of crime committed under the provision of the Act. Sections 52 to 60 deal with the confiscation and disposal of the property involved in the crime. The authorized officer is empowered not only to confiscate but sell or destroy the property if, in his wisdom, the article in question is liable to speedy and natural decay and/or in the public interest. Also, that sale would be for the benefit of the owner.

In the instant case, as is evident from the affidavit filed by the respondents, the vehicle was seized on 06th June 2017. Allegedly, ten bottles of foreign liquor (750 ml each) were recovered from the conscious possession of the carrier. After registration of the case, passing of the confiscatory order, the vehicle was put to auction in an open bid by a committee constituted for such purpose. The proposal of the highest bidder was accepted, and the auction amount deposited



by him on 19th January 2018. The possession of the vehicle handed over to the auction purchaser.

In the backdrop above, this Court, in the exercise of writ jurisdiction cannot venture into the exercise which the petitioner desires to do so, on the mere unsubstantiated allegation of the police having initiated such action on the asking of the petitioner's enemies, whose particulars also remain un-disclosed.

Petitioner invites the attention of this Court to a document dated 10th March 2018 indicating possession of the vehicle handed over to the auction purchaser on 01st March 2018.

Date of the auction and factum of the sale is not in dispute. In any event, such facts were not brought on record when this Court passed its order on 13th February 2018. As such, there is no merit in such submission. Hence the petition only merits rejection.

We notice that the petitioner has a right to prefer an appeal/revision under the provisions of the Act. From the record, it is not clear as to whether the petitioner has exercised such option or not. If the petitioner so chooses, as is the stand of the State in similar matters, issue of limitation shall not come way and such proceedings, if initiated, within a period of one month from today, shall be considered and decided on its merit as per law.



The writ petition stands disposed of with the observation
above.

(Sanjay Karol, CJ)

(S. Kumar, J)

K.C.Jha/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	27.06.2020
Transmission Date	N/A

