

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12521 of 2019

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Suraj Nath S/o Late Chunny @ Chunni Vill. and P.o.- Khalwa, p.s.- Nautan
(Nawtan), Distt.- Siwan

... .. Petitioner/s

Versus

1. The Principle Secretary, Department of Excise Department of Excise, Govt. of Bihar, Patna
2. The District Magistrate, Siwan
3. The Superintendent of Police, Siwan
4. The Station Head Officer Police Station- Siwan Mufasil (Dhanauti), Distt.- Siwan

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Shambhu Prasad Yadav
For the Respondent/s : Mr. Rewati Kant Raman, AC to SC 11

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
and
HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

Date : 26-02-2020

Heard Mr. Shambhu Prasad Yadav, learned Counsel for the petitioner and Mr. Rewati Kant Raman, learned Assistant Counsel to Standing Counsel No. 11 for the respondents.

It appears that the writ application was registered on 22.06.2019, the matter was adjourned for a week by order dated 11.09.2019 and thereafter a counter affidavit has been filed on behalf of respondent no. 3, the Superintendent of Police, Siwan, on 18.11.2019, but till date, no counter affidavit has been filed on behalf of the respondent no. 2, the District Magistrate, Siwan,



despite adjournment being granted earlier. Learned Counsel for the respondents submits that despite his best effort, he has not yet received any instruction from the District Magistrate, Siwan. In the circumstances, we dispose of the writ petition on its own merits.

The present writ application has been filed for release of Mahindra Bolero vehicle, bearing Registration No. BR29PA-4850, which has been seized in connection with Siwan Mufassil (Dhanauti O.P.) Police Station Case No. 525 of 2018, registered for the offences punishable under Sections 2372/273/34 of the Indian Penal Code and Sections 30(a) and 41 (1) of the Bihar Prohibition and Excise Act, 2016, as amended by Amendment Act 8 of 2018 (hereinafter referred to as 'the Act').

The relief, as prayed for, stipulated in paragraph 1 of the writ application, reads as follow:-

“For issuance of an appropriate writ in the nature of MANDAMUS commanding and directing to the Respondents Authorities for release of a Mahindra Bolero Registration No. BR-29PA 4850 in favour of the petitioner which is seized by Respondent No. 4 in connection with Siwan Mufasil Police Station Case No. 525/2018 for offence under sections 272/273/34 of Indian Penal Code and under sections 30 (a), 41 (1) Bihar Excise & Prohibition Act, 2016.”



The prosecution case, as per the written report of Bir Bahadur Singh, Assistant Sub Inspector of Police, Dhanauti O.P., submitted to the Station House Officer, Dhanauti O.P., to the effect that in the night of 11.09.2018, during the course of patrolling, a secret information was received that Sandeep Singh, Deepak Kumar, Pappu Yadav and Arvind Yadav are transporting liquor on a bolero vehicle and in the same night at Ziradai More, one bolero vehicle was intercepted and 432 litres of Indian Made Foreign Liquor were recovered, leading to the registration of Siwan Mufasil (Dhanauti O.P.) Police Station Case No. 525 of 2018.

It is submitted by learned Counsel for the petitioner that the petitioner is the registered owner of the vehicle in question and the certificate of registration of the seized vehicle has been brought on record by way of Annexure-2 to the writ petition. The vehicle is rotting under the open sky. It is further submitted that confiscation proceedings has not been initiated. The petitioner is ready to produce the motorcycle in question as and when required by the Court concerned and undertakes not to change the shape and nature of the motorcycle in question and also not to transfer or alienate the motorcycle in question.

Mr Rewati Kant Raman, learned Assistant Counsel to Standing counsel No. 7, relying on the counter affidavit filed on



behalf of respondent no. 3, the Superintendent of Police, Siwan, dated 18.11.2019, submits that it is evident that the proposal for confiscation of the vehicle in question has been transmitted to the District Magistrate, Siwan by the Investigating Officer himself on 05.10.2018, but instead of his best effort, he could not get any information as to whether any confiscation proceeding has been initiated or not. However, since the liquor was recovered from the vehicle in question, accordingly the same is liable to be confiscated under Section 56 (b) of the Act.

Having heard learned Counsel for the parties and on perusal of the record, it appears that the seizure has been made by the Assistant Sub-Inspector of Police, which is evident from the very opening line of the written report. Section 73(e) of the Act mandates the seizure by the police officer not below the rank of Sub-Inspector of Police. A valid seizure or detention is the *sine qua non* for initiating a confiscation proceeding under Section 56 of the Act. Hence the seizure is contrary to the provisions of the Act.

Keeping in view the fact that the First Information Report was registered on 12.09.2018 while the present writ application was registered on 22.06.2019 and more than 8 months have elapsed since the filing of the writ application, but till date no



counter affidavit has been filed on behalf of the District Magistrate, Siwan and learned Counsel for the respondents has no instruction with regard to initiation of any confiscation proceeding for confiscation of the vehicle in question. Hence, the writ application is disposed of on the basis of the counter affidavit filed on behalf of respondent no. 3, Superintendent of Police, Siwan. Considering the rival submission of the parties, from the counter affidavit, dated 18.11.2019, filed on behalf of respondent no. 3, Superintendent of Police, Siwan, it appears that proposal/report, under Section 58 (1) of the Act was transmitted by the Investigating Officer to the District Magistrate, Siwan, on 05.10.2018, but thereafter, adjourning the matter on several occasions, no counter affidavit on behalf of respondent no. 2, District Magistrate, Siwan, has been filed nor the instruction has been given to the Counsel for the respondent State as to whether the confiscation proceeding has been initiated.

In the circumstances in our view allowing the vehicle to turn into junk will be contrary to the ratio laid down by the Supreme Court, in the cases of **Sunderbhai Ambalal Desai Vs. State of Gujrat and other**, reported in (2002) 10 SCC 283 and **General Insurance Council and Ors. Vs. State of Andhara Pradesh and Ors.**, reported in (2010) 6 SCC 768.



Moreover, in view of the fact that more than two lakh cases have been registered in the State of Bihar under the provisions of the Act, there is no likelihood of the trial being concluded in near future, we are constrained to direct that the vehicle in question be released provisionally till the conclusion of the trial, if any, to the satisfaction of learned Additional Sessions Judge-II -cum- Special Judge, Excise, Siwan or if confiscation proceeding has been initiated, to the satisfaction of the District Magistrate -cum- Collector, Siwan, on the following conditions:-

(I) The petitioner will produce the proof of valid certificate of registration/ownership in his favour including the insurance papers;

(II) The petitioner will furnish surety bond of Rs.50,000/- but not in the form of bank guarantee or cash, with two sureties of the like amount to the satisfaction of the learned Additional Sessions Judge-II -cum- Special Judge, Excise, Siwan or the District Magistrate -cum- Collector, Siwan, as the case may be;

(III) The petitioner shall give an undertaking on affidavit that he will not deal with the vehicle in question or alienate or encumber the same creating any kind of adverse interest against



the interest of the State during the pendency of the confiscation proceeding;

(IV) The petitioner will not use the vehicle for any illegal purpose and as and when required, he will produce the vehicle in question before the court or authority concerned.

(V) At the time of release of the vehicle in question, the concerned court or authority shall get prepared photo copy of the vehicle in question duly certified in presence of the petitioner;

(VI) Panchnama of the vehicle in question shall also be prepared and will be kept on record which may be used as secondary evidence and the petitioner will furnish an affidavit incorporating therein an undertaking not to challenge the said photo copy or panchnama so prepared in his presence at the time of release of the vehicle in question for use in course of the trial or confiscation proceeding as the case may be.

The entire exercise will be done by the learned Additional Sessions Judge-II -cum- Special Judge, Excise, Siwan, or the District Magistrate -cum- Collector, Siwan, within ten days of receipt/production of a copy of this order.

It is made clear that we have not expressed any opinion with regard to the merits of the accusation or with regard to the ownership of the vehicle in question.



Accordingly, the writ application is allowed to the extent
as indicated above.

(Dinesh Kumar Singh, J.)

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	03-03-2020
Transmission Date	N/A

