

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18133 of 2019

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Suman Kumar, S/o- Upendra Prasad Yadav, R/o-Vill-Digghi, Ward No.-17,
P.S.-Murliganj, Distt-Madhepura

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Registration, Excise and Prohibition Deptt. Govt. of Bihar
2. Collector-cum-D.M., Madhepura
3. Superintendent of Police, Madhepura
4. Superintendent of Excise, Madhepura
5. Officer-in-Charge Murliganj Police Station, Madhepura

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjeev Verma
For the Respondent/s : Mr. Kumar Manish (SC-5)

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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 : 06-01-2020

Heard Mr. Suman Kumar, learned counsel for the petitioner and Mr. Kumar Pankaj, learned AC to SC-5 for the respondent-State.

The present writ application has been filed for quashing the order dated 09.02.2019, passed by respondent no.2, Collector-cum-District Magistrate, Madhepura in Excise Confiscation Case No. 72 of 2018, arising out of Murliganj P.S. Case No. 218 of 2018, whereby Yamaha SZRR V2.0 M Geen motorcycle of the petitioner bearing Registration No. BR43L4052 has been confiscated. Further prayer has been made



for stay of auction proceeding till disposal of final disposal of the confiscation proceeding. The relief as stipulated in paragraph no.1 of the writ application reads as follows:-

“That, instant application, by way of writ of mandamus, is directed against the respondents to take appropriate steps/measures for-

(a) Quashing the order dated 09.02.2019 passed by learned Collector-cum-DM, Madhepura in Excise Confiscation Case No. 72/18, arising out of the Murliganj PS Case No. 218/18, whereby he has been pleased to initiate confiscation proceedings and public auctioning of the motorcycle of the petitioner i.e. Yamaha SZRR V2.0 M.Geen, having Registration No. BR43L4052.1

(b) Stay the auctioning proceedings of the motorcycle of the petitioner till the final disposal of the instant case in connection with Murliganj PS Case No. 218/18, dated 17/06/18 booked under Section 30(a) and 37(B) of Bihar Prohibition and Excise Act, 1916.

(c) Releasing the confiscated motorcycle i.e. Yamaha SZRR V2.0 M.Geen, having Registration No. BR43L4052 in petitioner's favor and grant other consequential reliefs which the petitioner may be found entitled for.”

Factual matrix of the case is that the motorcycle in question was intercepted from which, 900 ML country made mahua liquor was recovered, leading registration of Murliganj P.S. Case No. 218/2018 with accusation under Section 30(a) and 37(B) of the Bihar Prohibition and Excise Act, 2016 as amended by Act 8 of 2018 (hereinafter referred to as ‘the Act’).



It is submitted by learned counsel for the petitioner that the petitioner was not driving the alleged motorcycle, though, he is the *bona fide* owner of the motorcycle in question at the time of seizure and a copy of the registration certificate of the seized motorcycle has been brought on record, as Annexure-2.

Learned AC to SC-5 submits that final order in the confiscation proceeding has been passed and the alleged motorcycle of the petitioner has already been confiscated.

Considering the fact that the final order has been passed by the Collector in the confiscation proceeding and the Act provides an alternative efficacious remedy of appeal against the order passed by the Collector within ninety days before the Excise Commissioner by virtue of Section 92(2) under Chapter IX of the Act, hence, this Court is not inclined to interfere in the matter.

It is well settled law that the discretionary jurisdiction under Article 226 of the Constitution of India is subject to self-imposed restriction and such discretion can be normally exercised when there is no alternative efficacious remedy available or writ petition has been filed for the enforcement of any of the fundamental rights or where there has been a



violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is under challenge. The Apex Court in the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Ors., reported in (1998) 8 Supreme Court Cases 1 has held as follows:-

“15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bare in at least three contingencies, namely, where the Writ Petition has been filed for the enforcement of any of the Fundamental rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.”

Accordingly, this writ application is disposed of with



a liberty to the petitioner to prefer appeal within a period of four weeks along with an application for condonation of delay. If such appeal is filed by the petitioner, the appellate authority is expected to consider application for condonation of delay in view of the fact that the writ application of the petitioner was pending before this Court and dispose of the appeal within a period of ten weeks from the date of its filing.

Needless to say, in case the vehicle in question has not been auctioned sold till date, it will not be put on auction sale till the disposal of appeal before the appellate authority, if so filed.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

Amrendra/-

AFR/NAFR	
CAV DATE	
Uploading Date	10.01.2020
Transmission Date	

