IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16457 of 2019

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Arvind Kumar S/o Late Tribhuwan Prasad Gupta Resident of 52 Miss Mandal Compound, Opposite Rameshwaram Apartment, Boring Road, P.o.- G.P.O., Budha Colony, Distt.- Patna

... ... Petitioner/s

Versus

1. The State of Bihar through the District Magistrate cum District Election Officer, Patna
2. The Superintendent of Police Distt.- Patna
3. The Junior Engineer cum Flaying Squad cum Static Surveillance Team Distt.- Patna
4. The State of Bihar through the Principal Secretary, Excise Department

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Krishna Mohan Mishra
For the Respondent/s	:	Mr.Vivek Prasad (Gp7)

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 29-06-2020

Heard learned counsel for the petitioner and learned counsel for the respondents.

Petitioner has prayed for the following relief:-

> “(i)To quash the seizure dated 03.05.2019 which has been made in connection with Kotwali PS Case No. 393/2019 under Section 30(a) of Bihar Prohibition and Excise Act, 016 and direct the authorities/court below to release 3 Kg 110 gram, as the jewellery in question was purchased by the petitoiner from Neha Jewellers, Karolbag, Near Gaffar Market, New Delhi, against in tax invoice.
>
> (ii) To hold and declare that the seizure of jewellery made in pursuance to the letter issued by election commission, New Delhi in letter No. ECI/PN/23/2019dated

11.03.2019 by the flying squad and strategic Surveillance team of Patna is wholly illegal as the respondent has not followed the prescribed procedure as laid down by the Commission.

(iii) To hold and declare that the seizure of jewellery under Bihar Prohibition and Excise Act, 2016 and also as per the order/instruction issued by election commission is illegal and arbitrary in view of the fact that the petitioner had purchased the jewellery against the invoice and the same invoice were available at the time of search and seizure."

Learned counsel for the petitioner has stated that gold jewellery seized in Kotwali PS Case No. 393 of 2019 under Section 30(a) of Bihar Prohibition & Excise Act, was illegal and jewellery is not liable for confiscation under Section 58 of the Act, as such same may be released in his favour, as same was purchased by the petitioner from Neha Jewellers, Karol Bagh, New Delhi, against tax invoice. Petitioner is rightful owner of the gold jewellery and is not an accused in the Excise case instituted against his employee.

Counter affidavit has been filed in which it has been stated that FIR was registered on typed complaint filed by Dilip Kumar Dinkar, Junior Engineer, Water and Land Management, against accused for carrying prohibited wine. It is alleged in the FIR that as per notification of election commission of India a flying squad team and Static Surveillance Team was constituted for parliamentary election 2019 and Informant along with police officials of Kotwali PS was deployed for vehicle checking and during vehicle checking one Tempo was stopped and one passenger tried to escape but he was nabbed by the police who disclosed his name as Sanjay Kumar and from his possession illicit liquor and from his handbag gold jewellery was recovered and both illicit liquor and gold jewellery were seized and income-tax department was accordingly informed. During investigation, a letter was sent to Joint Income-tax Director, (Investigation), Patna, with respect to examine the seized gold jewellery but no response was made by Income Tax Department and on conclusion of investigation, chargesheet was submitted against accused Sanjay Kumar under Section 30(a) of Bihar Prohibition and Excise Act.

The gold jewellery seized by the police is not liable for confiscation under the Excise Act, as such, bar of jurisdiction in confiscation under Section 60 of the Excise Act is not applicable and it is the trial court which has jurisdiction to release the seized jewellery and for which petitioner is granted liberty to file an application under Section 451 of Cr.P.C for release of gold jewellery and same shall be considered by the trial court where criminal case (Excise) is pending to consider and decide the application of petitioner within 30 days from the date of filing of such application.

Subject to aforesaid observation and direction, this application is disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	01.07.2020
Transmission Date	NA