

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18044 of 2019

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Kumod Kumar Singh son of Laxmi Narayan Singh resident of Village- Belha,
P.S.- Phulparas, District- Madhubani.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principle Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
2. The Principle Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
3. The Collector-Cum- District Magistrate, Madhubani.
4. The Superintendent of Police, Madhubani.
5. The Superintendent of Excise, Madhubani.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Umesh Chandra Verma
For the Respondent/s : Mr.Kumar Manish (Sc5)

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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 : 23-01-2020

Heard Mr. Pratush Pratap Singh, learned counsel for the petitioner and Mr. Madan Mohan, learned counsel appearing on behalf of the respondents.

The present writ application has been filed for release of Passion Pro motorcycle bearing Registration No.BR07AA1324 in favour of the petitioner, which has been seized in connection with Darbhanga Sadar P.S. Case No.107 of 2019 registered for the offences punishable under Section 30(a) of the Bihar Prohibition



and Excise Act, 2016, as amended by the Amendment Act 8 of 2018 (hereinafter referred to as 'the Act').

The relief as prayed for in paragraph No.1 of the writ application reads as follows :-

(a) To issue an appropriate writ/order/direction, in the nature of writ of Mandamus directing the respondent Collector to release Passion Pro motorcycle bearing Registration No.BR07AA1324, which has been illegally seized by the S.I. in Darbhanga Sadar P.S. Case No.107 of 2019 dated 19.03.2019 instituted for the offences under Section 30(a) of the Bihar Prohibition and Excise Act, 2016.

(b) For grant any other relief or reliefs for which the petitioner is found to be entitled in the facts and circumstances of the case.

The prosecution case got initiated on the basis of self statement of Shashi Kant Singh, SHO Sadar, Darbhanga recorded on 19.03.2019 at 4:30 P.M. is to the effect that on 19.03.2019 during patrolling duty, the motorcycle in question was intercepted from which 750 ML Indian Made Foreign Liquor were recovered and the vehicle was seized, leading to registration of Darbhanga Sadar P.S. Case No.107 of 2019 for the offence punishable under Section under Section 30(a) of the Act.

It is submitted by learned counsel for the petitioner that the petitioner is the registered owner of the vehicle in question and certificate of registration has been brought on record as Annexure-2. It is further submitted that though Confiscation Case No. 209 of



2019 has been initiated, but it has not been concluded till dated and the vehicle in question is rotting in the open sky. It is further submitted that the seizure has been made by an A.S.I., whereas, Section 73(e) of the Act stipulates that the seizure cannot be made by an officer below the rank of Sub Inspector of Police. Section 58 (1) of the Act mandates that anything is liable for confiscation under the Act, is seized or detained, the officer seizing and detaining such property shall without any reasonable delay submit a report to the District Collector, but the order dated 13.09.2019 passed by the Collector-cum-District Magistrate, Darbhanga, as contained in Annexure-A to the counter affidavit reflects that the proposal for confiscation of the vehicle in question has been transmitted by the Sr. Superintendent of Police, Darbhanga while the seizure was made by the A.S.I.. The order further reflects that the said proceeding was conducted by the Deputy Collector. Hence, the vehicle in question may be released subject to the result of the confiscation proceeding.

Mr. Madan Mohan, learned counsel for the State, filed counter affidavit though it is not specifically mentioned in the counter affidavit that on whose behalf it has been filed. The counter affidavit has been duly sworn by Mr. Ganesh Prasad, Excise Superintendent, Darbhanga. Paragraph 4 of the counter



affidavit suggests that on the proposal of the Sr. Superintendent of Police, Darbhanga, Confiscation Proceeding No. 209 of 2019 has been initiated and the notices have been issued to the petitioner on 14.09.2019. Hence, in that background, he prays that the vehicle in question may not be released.

Having heard learned counsels for the parties and considering their rival submissions, we are of the considered view that the FIR was lodged and seizure has been made by A.S.I. of Police whereas Section 73(e) of the Act stipulates that the seizure cannot be made by an officer below the rank of Sub Inspector of Police. Hence, the very seizure appears to be de hors the provisions of the Act. Section 73(e) of the Act reads as under :-

“73. Power to enter, inspect, search and seize.—
Any of the following officers namely:

(e) Any police officer not below the rank of Sub Inspector; or”

Section 58 (1) of the Act mandates that anything is liable for confiscation under the Act, is seized or detained, the officer seizing and detaining such property shall without any reasonable delay submit a report to the District Collector who has jurisdiction over the said area. But in the present case, it appears from perusal of order dated 13.09.2019, passed in Confiscation Case No. 209 of 2019, as contained in Annexure-A to the counter affidavit that the FIR was registered on 19.03.2019, the recommendation was made



by the Sr. Superintendent of Police, Darbhanga, on 22.08.2019, after about more than five months of the date of seizure, which is contrary to the provisions of Section 58(1) of the Act. Moreover, the Collector has not considered all these facts and mechanically the confiscation proceeding has been initiated which suggests the callous manner in which the quasi judicial function is being discharged. The orders dated 25.10.2019, 10.12.2019, 21.01.2020 passed in the aforesaid confiscation proceeding suggest that it has been conducted by the Sr. Deputy Collector, who has no authority to conduct the proceeding under Section 58(1) of the Act. It also suggests that the District Magistrate was busy on all the dates, particularly in the video conferencing. Moreover, there is nothing on record to suggest that the said officer has been authorized by the Government to exercise the powers and perform the functions of the Collector-cum- District Magistrate under the Act.

In the facts and circumstances of the present case, no useful purpose will be served in allowing the vehicle to rot under open sky leading to a complete waste of public money. Keeping the vehicle in such condition and allowing to reduce it into a junk, would ultimately result into waste of public money has been deprecated by the Supreme Court in the case of **Sunderbhai Ambalal Desai Vs. State of Gujrat** and other analogous cases



reported in **(2002) 10 SCC 283** and in the case of **General Insurance Council and Ors. Vs. State of Andhara Pradesh and Ors. reported in (2010) 6 Supreme Court Cases 768.**

Accordingly, we direct that the same be released provisionally till the conclusion of the trial or till the conclusion of confiscation proceeding to the satisfaction of learned Additional District and Sessions Judge-cum-Special Judge (Excise), Darbhanga, 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 A.D.J.-cum-Special Judge, Excise, Darbhanga or the confiscation authority, 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 Court below 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 this case or with regard to the ownership of the vehicle in question, but it is expected from the Collector-cum-District Magistrate, Darbhanga, to conclude the proceeding of Excise Confiscation Case No. 209 of 2019 within a period of six weeks, in view of the discussions made above and as per the provisions of the Act.



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

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

sanjeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.01.2020
Transmission Date	NA

