

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18007 of 2019

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Rajesh Kumar Son of Sakaldeep Prasad Resident of Near St. Joseph High School, M-F-, 6/4 M.I.G. Bhootnath Road, B.H. Colony Patna

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Excise and Prohibition, Government of Bihar, Patna
2. The District Magistrate cum Collector Patna
3. The Senior Superintendent of Police Patna
4. The Sub Divisional Police Officer Kankarbagh, Patna
5. The S.H.O. Kankarbagh, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Mukund Kumar
For the Respondent/s : Mr.Vikash Kumar (SC 11)
Mr. Revati 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 : 23-01-2020

Heard learned counsels for the parties.

The present writ application has been filed for release of Honda Activa 5G Scooter motorcycle of the petitioner bearing Registration No. BR01DS 5467, which has been seized in connection with Kankarbagh P.S. Case No. 440 of 2019, registered for the offences under Sections 272 and 273 of the IPC, 1860 and under Section 30(a) of the Bihar Prohibition and Excise Act, 2016, as amended by Amendment Act 8 of 2018, (hereinafter referred to as 'the Act'). The prayer as contained in paragraph no.1 of the



writ application, reads as follows:-

“(i) Issuance of an order, direction or writ in the nature of Mandamus commanding the respondent authorities the release the Honda Activa 5G Scooter of the petitioner bearing Registration No. BR01DS 5467 which was seized in connection with Kankarbagh P.S. Case No. 440/19 corresponding to Special Case No. 4449/19 registered for the offences under Sections 30(a) Bihar Excise & Prohibition Act 2016.”

The prosecution case got initiated on the written report of S.I. of Police, Vijay Kumar Singh of Kankarbagh Police station submitted to the SHO, Kankarbagh Police Station is to the effect that on 6.5.2019 during patrolling, the scooter in question was intercepted and from the possession of Suraj Kumar, five bottles of 750 ml of Indian Made Foreign Liquor were recovered along with one old Samsung mobile phone, while one Redmi Note 5 mobile phone was recovered from the possession of the petitioner, leading to registration of Kankarbagh P.S. Case No. 440 of 2019.

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 of the same has been brought on record as Annexure-2.



This Court, vide order dated 17.12.2019 directed learned counsel for the respondents to file counter affidavit giving in detail whether the confiscation proceeding in relation of the vehicle in question has been initiated or not and if confiscation proceeding has been initiated, the date of report under Section 58(1) of the Act and to produce the complete order sheet of the confiscation proceeding pending before the Collector.

A counter affidavit has been filed on behalf of the Collector, Patna sworn by Prahlad Prasad Bhushan, Assistant Commissioner, Excise, Patna wherein statement has been made in paragraph 6 that the proposal for destruction of seized liquor has been transmitted under Section 58(1) of the Act and no proposal for confiscating the vehicle in question has been sent. Consequently, Confiscation Case No. 1648 of 2019-20 for destruction of liquor and the seized liquor was destructed in pursuance to the order dated 11.10.2019 passed by the District Magistrate, Patna, as contained in Annexure B to the counter affidavit. However, the Collector observed that the confiscation proceeding will be initiated with regard to the vehicle in question if such proposal comes. Paragraph nos. 6 to 8 of the counter affidavit read as follows:

“6. That the S.S.P., Patna has sent the relevant documents with respect to destruction of



liquor, including the report submitted by the Officer In-Charge, Kankarbag P.S., seizure list along with copy of F.I.R. and charge sheet in the aforesaid matter. However, no proposal has been sent for confiscating of the aforesaid Honda Activa 5G Scooter bearing Registration No.-BR01-DS-5467.

7. That accordingly Confiscation Case No.-1648/2019-20 has been initiated in the Court of the District Magistrate, Patna for destruction of liquor and thus order vide memo no.-986, dated 11-10-2019 has been passed U/s-57 and 58(4) for destroying the said liquor.

8. That the answering respondent will take further action in accordance with law when the confiscation proposal of the said vehicle is made available by the office of the S.S.P., Patna.”

Considering the fact that the FIR was registered on 6.5.2019, it would be relevant to appreciate that Section 58(1) of the Bihar Prohibition and Excise (Amendment) Act, 2018 mandates the transmission of report to the Collector having jurisdiction over the area by seizing or detaining authority if the thing is liable to be confiscated under Section 56 of the Act within a reasonable time. Section 58(1) of the Act does not envisage a piecemeal report for initiating confiscation proceeding. Once the exercise, though not done by the seizing or detaining authority,



but by the Superintendent of Police, Patna who has no jurisdiction to do so, has been done, then it can safely be presumed that the prosecution is not intending to confiscate the vehicle in question. In any view of the matter, no useful purpose will be served allowing the vehicle to reduce to junk only for the same to be produced as material evidence during trial, particularly in view of the fact that trial, if any, is not likely to be concluded in near future, particularly in view of two lakh cases, having been registered in the State of Bihar under Excise Act, which has been deprecated by the Supreme Court in the case of *Sunderbhai Ambalal Desai Vs. State of Gujrat* and other analogous cases (2002) 10 SCC 283 and in the case of *General Insurance Council and Ors. Vs. State of Andhara Pradesh and Ors.* (2010) 6 Supreme Court Cases 768.

Accordingly, we direct that the same be provisionally released till the conclusion of the trial or the conclusion of confiscation proceeding, if any, on the following conditions to the satisfaction of learned Additional District and Sessions Judge-cum-Special Judge (Excise), Patna:

(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, Patna 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, if any or trial;

(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 initiation of confiscation proceeding with regard to the vehicle in question.

Accordingly, the writ application is disposed of.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

