

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18094 of 2019

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Shankar Kumar, Son of Raghuvir Yadav, Resident of Village- Pathagadh, P.S.
Magadh University, District- Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise Department,
Bihar, Patna.
2. The District Magistrate, Gaya, Bihar.
3. The Senior Superintendent of Police, Gaya, Bihar.
4. The Officer Incharge, Sherghati Police Station, District- Gaya.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Arvind Kumar Singh
For the Respondent/s : Mr.Vivek Prasad (GP-7)

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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. Arvind Kumar Singh, learned counsel
for the petitioner and Mr. Vivek Prasad, learned G.P.-7 for the
respondent -State.

The present writ application has been filed for
release of Mahindra Truck bearing Registration number BR 02
GA 5079, seized in connection with Sherghati (Dobhi) P.S. Case
No. 147/2019, registered under Sections 37(1),(2) of Bihar
Prohibition and Excise (Amendment) Act, 2016, as amended by
Amendment Act 8 of 2018 (hereinafter referred to as 'the Act').
The relief(s), as stipulated in paragraph no.1 of the petition,



read(s) as follows:-

“That, this is an application for issuance of appropriate writ(s)/direction(s) to the Respondents for release of the Vehicle of the Petitioner in his favour which is one Mahindra Truck bearing Reg. No. BR02-GA-5079, Chasis No.-MA1PFALBCF6F48008 and Engine No.- BEFZF11155 which has been seized in connection with Sherghati (Dobhi) P.S. Case No. 147/2019 dated 04.04.2019 for the offences punishable under Sections 37(1)(2) of Bihar Prohibition and Excise Act, 2016 on 04.04.2019 and for which neither the confiscation proceeding has been initiated nor any notice in this connection has been served to the petitioner till date.”

The factual matrix of the case is that the truck in question was seized while the driver of the alleged vehicle, namely, Parshuram Yadav was found in intoxicated condition, leading to registration of FIR, being Sherghati (Dobhi) P.S. Case No. 147/2019.

It is submitted by learned counsel for the petitioner that the petitioner is the owner of the vehicle in question and the certificate of registration, fitness, insurance and Challan of National Permit have been brought on record as Annexure 1 Series. This is an admitted position that no recovery of liquor or intoxicant was made from the vehicle in question. The seized vehicle is rotting under the open sky. It is further submitted that



since there is no recovery and the vehicle has not been used for carrying liquor or intoxicant, hence it is not liable for confiscation under the provisions of Section 56 of the Act.

Learned GP 7 submits that this is an admitted position that neither any intoxicant nor liquor has been seized from the truck in question nor the same has been used for carrying any such prohibited article. Hence, prima facie, it is not liable for confiscation. Hence, learned counsel for the respondents has no objection with regard to the provisional release of the truck in question.

However, learned counsel for the respondents has also relied upon the judgment in the case of Diwakar Kumar Singh Vs. The State of Bihar and Ors., 2018 (3) PLJR 403, wherein it has been held that it shall be mandatory for the confiscating authority, before passing an order in confiscation proceeding when any person is found in drunken condition but neither any liquor is seized nor the vehicle is used for transportation of the liquor, to decide it as a preliminary issue whether in such a condition, the vehicle would be liable for confiscation under Section 56 of the Act. A copy of the said order was to be communicated to all the District Magistrates of the State through the office of the Advocate General for its strict



compliance.

Having heard learned counsels for the parties, this is not in dispute that there was no recovery of liquor or intoxicant from the vehicle in question. This is also not a case that the liquor was being carried through the vehicle in question. This is an admitted position that the confiscation proceeding has not been initiated. Statement to that effect has been made in paragraph 10 of the petition which reads as follows:

“That, the said vehicle of the petitioner has been seized on 04.04.2019, but neither the confiscation proceeding has been initiated in this case nor any notice in this connection has been served to the petitioner till date.”

However, learned counsel for the respondent does not have any instruction with regard to the initiation of confiscation proceeding. However, even if the authority chooses to initiate such proceeding then they have to comply the mandatory direction given in the case of Diwakar Kumar Singh (supra).

Since there is a bar under Section 60 of the Act for any court to pass any order with regard to the seized vehicle, the Special Judge has no jurisdiction to release the vehicle. However, this bar under Section 60 of the Act will not apply in



exercise of the jurisdiction under Article 226 of the Constitution of India. Hence, in such a circumstance, the case comes within one of the exceptions where the discretionary jurisdiction under Article 226 of the Constitution of Indian can be exercised for releasing the vehicle seized, as has been held in the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Ors., reported in (1998) 8 Supreme Court Cases 1. Paragraph 15 reads 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.”

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 rot will be ultimately resulting into waste of public money, 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.

Moreover, learned counsel for the respondents has no objection to the provisional release of the vehicle, hence we direct that the same be released provisionally till the conclusion of the trial or conclusion of confiscation proceeding, if any, on the following conditions:

(I) The petitioner will produce the proof of valid certificate of registration/ownership in his favour including the insurance papers of the vehicle in question before the learned A.D.J.-cum-Special Judge, Excise, Gaya;

(II) The petitioner will furnish bank guarantee of rupees three lacs, with two sureties of the like amount to the satisfaction of the Special Court concerned 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 Special Judge, Gaya 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.

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

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

Amrendra/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

