

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.18083 of 2019**

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Amarjit Kumar Singh, Son of Sakal Deo Singh, Resident of Mohalla- New Area, Chitoud Nagar, Road No. 2, P.S. Nagar, District- Aurangabad.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Registration and Excise, Bihar, Patna.
2. The District Magistrate, Aurangabad.
3. The Superintendent of Police, Auragabad.
4. The Station House Officer, Risiyap Police Station, District- Aurangabad.

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Santosh Kumar Pandey, Adv.  
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 : 04-02-2020**

Heard learned counsel for the petitioner and the respondents.

The present writ application has been preferred for release of an Auto Rickshaw (Tempo) bearing Registration No. BR26K4258 in favour of the petitioner, which has been seized in connection with Risiyap P.S. Case No.70 of 2019, registered for the offence punishable 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 stipulated in paragraph No.1 of the



writ petition reads as under :-

“That this is an application for issuance of appropriate writ/ writs, order/orders, direction/directions for commanding the respondent authorities to release the Auto Rickshaw (Tempo) vehicle bearing Registration No. BR-26K-4258 having Engine No. S6H8608228, Chassis No. ZFUH345342 in the favour of the petitioner who is the owner of the vehicle in question and said vehicle was seized in pursuance of Risiyap P.S. Case No. 70 of 2019 dated 30.07.2019 registered for offences under Section 30(ka) of the Bihar Prohibition and Excise Amendment Act, 2018. In this way vehicle in question has been parked in the premises of Risiyap Police Station causing decay of vehicle on day to day as the same has been parked in open space without any use and in absence of any state hanger.”

The prosecution case got initiated on the basis of written report submitted by Lalan Kumar, A.S.I. of Police, before the S.H.O., Risiyap to the effect that on 30.07.2019 at 08.30 A.M., during patrolling, on the basis of secret information to the effect that illicit liquor is being transported through an auto rickshaw, consequently, an auto rickshaw was intercepted. From the said auto rickshaw, 98 satchels of 200 ml each



Country Made Liquor were recovered, leading to registration of Risiyap P.S. Case No.70 of 2019.

It is submitted by learned counsel for the petitioner that the petitioner is the registered owner of the vehicle in question and a copy of certificate of registration of the vehicle has been brought on record, as Annexure-2. It is further submitted that the petitioner was not travelling in the vehicle in question at the time of seizure and liquor, if any, was seized from the passengers' side of the said vehicle. Hence, the presumption of innocence in his favour. Moreover, 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 and Section 58(1) of the Act further mandates that anything which is liable to be confiscated, report of the same has to be transmitted without without a reasonable delay by the seizing or the detaining authority to the District Magistrate of the jurisdiction. In the present case, seizing and the detaining authority is the A.S.I., Lalan Kumar, whereas, paragraph 5 of the counter affidavit, filed on behalf of respondent No.2 reflects that the report has been transmitted by the Superintendent of Police, Aurangabad. It is lastly contended that the writ application was registered on 02.09.2019, it was



heard on 17.12.2019 when this Court, at the request of learned A.C. to SC-5, adjourned the matter for 20<sup>th</sup> January, 2020 enabling him to file counter affidavit and subsequent to that a report was transmitted by the Superintendent of Police, Aurangabad to the District Magistrate, Aurangabad, on 30.12.2019 that Confiscation Case No. 04 of 2020 has been initiated.

Learned counsel for the respondents submits that with regard to the vehicle in question, Confiscation Case No. 04 of 2020 has already been initiated and it would be concluded within a time frame. Since the vehicle in question was found using for transporting illicit liquor. Hence, the same is liable to be confiscated under Section 56(1) of the Act. So far as the lacuna in the procedural aspect by the prosecuting authority in seizing and transmitting the report for initiation of confiscation proceeding will be looked into by the District Magistrate for taking appropriate action.

Having heard learned counsels for the parties and considering their rival submissions, we are of the considered view that the FIR was lodged and the seizure was 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 dehors the provisions of the Act. Similarly, Section 58(1) of the Act mandates for the seizure or transmission of report by the seizing or the detaining authority under the Act, whereas, in the present case, on the request of the A.S.I., the Superintendent of Police, has transmitted the report. Above all, Section 58(1) of the Act mandates for transmission of report without any delay, whereas, in the present case, the FIR was registered on 30.07.2019 and the report for initiating a proceeding has been transmitted on 30.12.2019 and it has been initiated in January, 2020.

Considering the fact that once the confiscation proceeding is initiated, the exercise of discretionary jurisdiction under Article 226 of the Constitution of India, having self imposed restrictions can be exercised in exceptional or in a monstrous situation which has been deprecated by the Apex Court in the case of **State of Karnataka Vs. K. Krishnan** reported in **(2000) 7 Supreme Court Cases 80** and in the case of **State of West Bengal and Ors. Vs. Sujit Kumar Rana** reported in **(2004) 4 Supreme Court Cases 129**, as well as a Full Bench of this Court in the case of **Baleshwar Roy Vs. The State of Bihar and Ors.** reported in **2018(4) PLJR 970**.



In view of the discussions made above, it is expected from the Respondent No. 2, the District Magistrate, Aurangabad to conclude the proceeding of the Excise Confiscation Case No.04 of 2020 within a period of six weeks from the date of receipt/production of a copy of this order in accordance with law.

The petitioner is also expected to appear regularly and participate in the confiscation proceeding.

Accordingly, with the above observation and direction, the present writ application is disposed of.

**(Dinesh Kumar Singh, J)**

**( Anil Kumar Sinha, J)**

Ashwini/-

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