

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18049 of 2019

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Arbind Kumar Singh, aged about 38 years, (Male), Son of Vishwanath Singh,
Resident of Village- Khirikon, Police Station- Agiaon Bazar, District- Bhojpur
... .. Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Department of Excise,
Government of Bihar, Patna.
2. The District Magistrate, Rohtas at Sasaram.
3. The Superintendent of Police, Rohtas at Dehri-on-Sone.
4. The District Excise Officer, Rohtas at Sasaram.
5. The S.H.O., Kochas Police Station, District- Rohtas

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajani Kant Singh

For the Respondent/s : Mr. Sanjay Kumar , A.C. to G.P.- 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 : 28-01-2020

Heard Mr. Rajani Kant Singh, learned counsel for the
petitioner and Mr. Sanjay Kumar, learned A.C. to G.P. 7.

The present writ application has been filed for release of
the Scorpio vehicle bearing registration no. BR03PA4933, which
has been seized in connection with Kochas P.S. Case No. 103 of
2019 registered for the offence 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 reads as follows:-

“1. That, the petitioner craves indulgence of this Hon’ble Court for issuance of an appropriate writ in the nature of mandamus or any other writ / writs, order / orders, command / commands directing the respondent no. 2 to release Scorpio bearing registration no. BR03PA4933, in favour of the petitioner within a specified period in connection with Kochas Police Station Case No. 103 of 2019 in which the Scorpio of the petitioner has been illegally seized for the offence under Section 30(a) of the Bihar Prohibition and Excise Act, 2016 and any other relief / reliefs for which the petitioner is found entitled in the facts and circumstances of the case.”

The prosecution case as per the written report of the Assistant Sub-Inspector of Police Kanhaiya Singh Yadav submitted to the Station House Officer, Kochas Police Station is to the effect that on 20.05.2019 at 10.00 A.M. during the course of patrolling, the vehicle in question was intercepted and 329.04 liters of Indian Made Foreign Liquor and 12 liters of Beer were recovered, leading to registration of Kochas P.S. Case No. 103 of 2019.



Learned counsel for the petitioner submits that the petitioner is the registered owner of the vehicle in question. The certificate of registration of the vehicle in question has been brought on record, as Annexure - 2 to the present writ application. He further submits that the vehicle in question is rotting under the open sky and will reduce into a junk as there is no likelihood of the trial being concluded in near future.

Learned counsel for the respondent - State relying upon the counter affidavit filed on behalf of the respondent no. 2 i.e. District Magistrate, Rohtas at Sasaram submits that the confiscation proceeding was initiated on the basis of a report submitted by Superintendent of Police, Rohtas vide memo no. 1633 dated 26.07.2019, leading to initiation of Confiscation Case No. 155 of 2019. On verification of the ownership of the vehicle in question it has been found registered in favour of the petitioner, whereupon notices were issued to the petitioner directing him to appear on 26.11.2019 but he did not appear, and the next date fixed is 28.01.2020 in the confiscation case.

Considering the rival submissions of the parties, we are absolutely satisfied that the proceeding in the present case is being conducted contrary to the provisions of the Act since the seizure has been made by Assistant Sub Inspector of Police, who is not



authorized under the Act to make seizure as mandated under Section 73(e) of the Act, which reads as follows:-

***“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;”***

Moreover, Section 58(1) of the Act stipulates that anything which is liable to be confiscated under Section 56 of the Act, a report has to be transmitted to the concerned District Magistrate / Collector having jurisdiction over the said area by the seizing or detaining authority. In the present case it has been transmitted by Assistant Sub- Inspector of Police.

In the circumstances, *prima facie* it appears that confiscation proceeding has been initiated mechanically. However, since it has already been initiated, we are not inclined to interfere in view of the ratio laid down by a Full Bench of this Court in the case of Baleshwar Roy & Ors. Vs. The State of Bihar and Ors., reported in 2018(4) PLJR 970 wherein it has been held that on initiation of confiscation proceeding, Court in exercise of discretionary jurisdiction under Article 226 of the Constitution of India can only interfere in monstrous condition.

However, we expect the respondent no. 2 i.e. District Magistrate, Rohtas at Sasaram to conclude the confiscation



proceeding strictly in accordance with law since the Act in question being very stringent one, the procedural safeguards have to be followed very meticulously. We have further noticed that the proceeding in the present case is being conducted by Deputy Collector, however, there is nothing on record to suggest that he has been authorized under Section 2(15) of the Act to conduct the proceedings. It is expected from District Magistrate to conclude the confiscation proceeding after giving due opportunity of hearing to all the affected persons / parties in accordance with law within a period of six weeks from the date of receipt / production of a copy of this order.

In case the confiscation proceeding is not concluded for no laches on the part of the petitioner within the stipulated time frame, the petitioner will be at liberty to renew his prayer for release of the vehicle in question.

The writ petition stands disposed of.

(Dinesh Kumar Singh, J)

praful/-

(Anil Kumar Sinha, J)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07-02-2020
Transmission Date	NA

