

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17983 of 2019

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Suneel Singh, Son of Sri Gudan Singh, Resident of Village -Mithahan,
Dalipur, Post Office -Dalipur, Police Station- Dhangai, District - Bhojpur.

... .. Petitioner/s

Versus

1. The State of Bihar through, the Principal Secretary, Excise Department,
Government of Bihar, Patna.
2. The District Magistrate, Bhojpur at Ara.
3. The Superintended of Police, Bhojpur at Ara.
4. The Station Head Officer, Jagdishpur Police Station, District - Bhojpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Anil Kumar, Adv.
For the Respondent/s	:	Mr. Kumar Manish, SC-5
		Mr. Prashant Kumar, AC to 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 : 21-01-2020

Heard Mr. Anil Kumar, learned counsel for the
petitioner and Mr. Prashant Kumar, learned AC to SC-5 for the
respondent-State.

The present writ application has been filed for
release of Bajaj Platina motorcycle of the petitioner bearing
Registration No. BR-03T-4828 seized in connection with
Jagdishpur P.S. Case No.353 of 2018 registered for the offence
punishable under Section Section 30(a) of the Bihar Prohibition
and Excise Act, 2016 as amended by Act 8 of 2018 (hereinafter



referred to as 'the Act') .

The prosecution case as per the self-statement of A.S.I., Gufran Ali, Jagdishpur Police Station recorded on 25.09.2018 is to the effect that the vehicle in question was intercepted and from the said vehicle, 20 litres of country made liquor was recovered, leading to registration of Jagdishpur P.S. Case No.353 of 2018.

A counter affidavit, dated 18.01.2020 has been filed on behalf of Respondent No.2, the District Magistrate, Bhojpur, Ara, stipulating at paragraph No.4 therein that with respect to the vehicle in question, confiscation proceeding being Excise Case No.69 of 2019 has already been initiated, which reads as under :-

“4. That on receipt of the above request and satisfied with the proposal a proceeding bearing Excise Case No. 69 of 2019 dated 12.03.2019 was started by the office of answering Respondent No.2 and a notice was sent to the Owner (Petitioner) of the seized vehicle.”

It is submitted by learned counsel for the petitioner that the petitioner is the registered owner of the vehicle in question. A registration certificate of the seized vehicle has been



brought on record, as Annexure-2. It is further submitted that till date the petitioner has not received any notice suggesting initiation of confiscation proceeding with regard to the vehicle in question and the said vehicle is rotting in the open sky.

It is submitted by learned AC to SC-5 that proceeding of the said confiscation case will be concluded within a time frame.

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. Considering the view taken 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**, 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**, held as follows:

“62. It may, however, be added that Article 226 of the Constitution of India provides power to the High Court to issue writs to any person or authority, including in appropriate cases, any Government, any order or writs (including writs in the nature of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari*, or any of



them, for the enforcement of any of the rights conferred by Part-III and for any other purpose). Similarly Article 227 of the Constitution of India provides the power of superintendence over all Courts and Tribunals throughout the territories in relation to which any High Court exercises its jurisdiction. The powers of the High Court under Articles 226 and 227 of the Constitution of India cannot be curtailed under any circumstance, as the power flows from the Constitution itself. No statutory bar can affect the power of the High Court under Articles 226 and 227 of the Constitution of India.

63. Despite such wide and untrammelled powers, without any circumscription by external restrictions, the Courts have evolved certain self-imposed limits while exercising these powers. The High Courts, normally, would not go beyond justified inhibitions under any Statute except where there is a complete jettisoning of rule of law or under exceptional circumstances which demand timely judicial interdict. This inhibition is basically ordained, keeping in mind that there is a national weal behind any valid piece of Legislation incorporating and inhering in itself the social objective behind any Legislation. Though, no limitations or fetters have been put on the powers of the High Court under Articles 226 and 227 of the Constitution of India, as the High Courts perform as sentinel on the qui-vive, but such power is not to be exercised casually and without coming to the conclusion that non-exercise of such power would lead to positive injustice. Times without number, it has been held by the High Courts that only under condition of a person establishing that substantial injustice has or is likely to ensue, such extraordinary powers can be exercised. It needs no adumbration by this date that the plenary powers of the High Court have only to be exercised in the



interest of justice.

64. Thus, an order of release may be passed under Article 226/227 of the Constitution of India, even pending confiscation proceedings, but only when it is established before the Court that the procedure prescribed and the law in that regard has been completely flouted and that there is complete violation of the procedure prescribed for confiscation, viz., notice to the offender before confiscation, allowing him opportunity of giving written representation and affording hearing on the issue to him and that such injustice cannot be remedied without the exercise of the extraordinary power.

65. Needless to state that under Article 226 of the Constitution of India, the Court will not go into the disputed question of facts.

66. Thus, the powers directing for release of the vehicles or goods, during the pendency of the confiscation, can only be sparingly exercised under monstrous situations and circumstances when injustice occurs because of non-fulfillment of the conditions for confiscation.”

Since the vehicle in question was seized on 25.09.2018, it is expected that the Respondent No. 2, the District Magistrate-cum-Collector, Bhojpur at Ara to conclude the proceeding of Excise Case No.69 of 2019 and dispose of the same by a reasoned and speaking order 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/-

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

