

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17953 of 2019

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Sanoj Sharma, Son of Nunulal Sharma, resident of Village- Dhurgaon, P.S.
and District- Mahnepura.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Bihar Prohibition and Excise Department, Bihar, Patna.
2. The Excise Officer, Bihar Prohibition and Excise Department, Madhepura.
3. The District Magistrate, Madhepura.
4. The Superintendent of Police, District of Madhepura, Bihar.
5. The Officer in charge of Puraini Police Station, District- Madhepura.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Alok Kumar Singh
For the Respondent/s : Mr.Kumar Manish (S C 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. Alok Kumar Singh, learned counsel for the
petitioner and learned A.C. to SC 5 for the respondents.

The present writ application has been filed for release
of Hero M Passion Pro motorcycle bearing registration number
BR 43J 6507 (though at the time of seizure the vehicle was not
registered), which has been seized in connection with Puraini
P.S. Case No. 145 of 2018 registered for the offences 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 factual matrix of the case is that the prosecution case got initiated on the basis of statement of SI Sunil Kumar Bhagat recorded on 1.9.2018 at 3.45 P.M. to the effect that while after attending the meeting at the S.P. Office, he was on the way back to the police station, he began conducting vehicle check and in course of conducting search, he intercepted two persons along with Hero Honda Passion Pro motorcycle. It is further alleged that from the motorcycle in question a plastic bag containing 19 litres of country made liquor was seized, leading to registration of the aforementioned police station case.

The petitioner claims that he was not travelling on the motorcycle in question but he claims to be the owner of the same and has brought on record the purchase invoice of the motorcycle in question as Annexure 2 and certificate of registration as Annexure 3 to the supplementary affidavit, since the vehicle was not registered on the date of seizure. The FIR suggests that the vehicle was not having registration plate but it was claimed by the petitioner that the vehicle was registered in 2017 and was bearing a registration plate.

It is submitted by learned counsel for the petitioner that the petitioner is the registered owner of the vehicle in



question and since he was not driving the motorcycle in question at the relevant time, hence the presumption of innocence as envisaged under Section 32 of the Act is in his favour. It is further submitted that no confiscation proceeding was initiated when the writ application was filed on 30.8.2019. Statement to that effect has been made in paragraph 5 of the writ application which reads as follows:

“That there is no confiscation proceeding has been started till today.”

From the counter affidavit, it appears that after having sought adjournment from this Court, a malicious confiscation proceeding has been initiated. The proposal for transmission of report under Section 58(1) of the Act was made on 11.1.2020 and the confiscation proceeding was initiated by the District Magistrate, Madhepura on 13.1.2020. Hence, the prosecution is absolutely malicious and has seemingly been initiated in order to frustrate the release of the motorcycle in question.

Lerned AC to SC 5, however, submits that since there is recovery from the vehicle in question, it is liable to be confiscated under Section 56 (b) of the Act and as such, the confiscation proceeding has rightly been initiated.

Having heard learned counsels for the parties, this is



not in dispute that from the motorcycle in question, 19 litres of country made liquor was recovered. Section 56 of the Act prescribes the things which are liable for confiscation. Section 56 of the Act reads as follows:

“56. Things liable for confiscation – Whenever an offence has been committed, which is punishable under this Act, following things shall be liable to confiscation, namely -

(a) any intoxicant, liquor, material, still, utensil, implement, apparatus in respect of or by means of which such offence has been committed;

(b) any intoxicant or liquor unlawfully imported, transported, manufactured, sold or brought along with or in addition to, any intoxicant, liable to confiscation under clause (a);

(c) any receptacle, package, or covering in which anything liable to confiscation under clause (a) or clause (b) is found and the other contents, if any, of such receptacle, package or covering;

(d) any animal, vehicle, vessel or other conveyance used for carrying the same.

(e) any premises or part thereof that may have been used for storing or manufacturing any liquor or intoxicant or for committing any other offence under this Act.”

Section 58 provides the procedure for initiation and passing of final order of confiscation, which reads as follows:

“58. Confiscation by District Collector.—(1)

Notwithstanding anything contained in this Act or any other law for the time being in force, where anything liable for confiscation under this Act is seized or detained under the provisions of this Act, the officer



seizing and detaining such property shall, without any reasonable delay submit a report to the District Collector who has jurisdiction over the said area;

(2) On receipt of the report under sub-section (1), the District Collector if satisfied that an offence under this Act has been committed, may, whether or not prosecution is instituted for the commission of such an offence and whether or not a case is pending before any court, order confiscation of such property;

(3) The Collector shall, before passing an order under subsection (2), give a reasonable opportunity to the person concerned, of being heard;

(4) While making an order of confiscation under sub-section (2), the District Collector may also order that such of the properties which the order of confiscation relates, which in his opinion cannot be preserved or are not fit for human consumption, be destroyed. Whenever any confiscated article has to be destroyed in conformity with these provisions, it shall be destroyed in the presence of a Executive Magistrate or officer ordering the confiscation or forfeiture, as the case may be, or in the presence of the Excise Officer not below the rank of a Sub-Inspector;

(5) While making an order of confiscation under sub-section (2), if the District Collector is of the opinion that it is expedient in the public interest to do so, he may order the said property or any part thereof to be sold by public auction or dispose of departmentally and proceeds deposited with the State Government;

(6) The District Collector shall submit a full report of all particulars of confiscation to the Commissioner of Excise within one month of such



confiscation.”

Section 58(1) of the Act mandates the procedure of confiscation by the District Collector which starts with non-obstante clause and suggests that notwithstanding anything contained in the Act, where anything is liable for confiscation under the Act, is seized or detained, the officer seizing and detaining such property shall without any reasonable delay submit a report to the District Collector who has jurisdiction over the said area.

In the present case, the FIR was registered on 1.9.2018. As per the counter affidavit, the proposal for confiscation of the motorcycle in question was sent by the Superintendent of Police, Madhepura on 10.1.2020.

This Court, on the prayer of learned AC to SC 5 adjourned the matter on 17.12.2019 and only thereafter the said proposal has been sent. Prima facie, it appears that the quasi judicial powers vested in the authority under the Act, is being exercised in a very perfunctory manner without caring at least about the mandate provided in the statute. Section 58(1) of the Act specifically suggests that the report will be transmitted by the officer seizing and detaining such property but in the present case it has been transmitted by the Superintendent of Police,



Madhepura and consequently, on 13.1.2020 the confiscation was initiated by the Collector on the report of an authority who is not empowered under the Act to submit such report. The report was transmitted after more than four months when Section 58(1) of the Act suggests that the same should be transmitted without any unreasonable delay, but seemingly the Collector has no time to appreciate the provisions of the Act for initiating the proceeding and the fact of submission of report after unexplained delay has not been noticed while passing order dated 13.1.2020 in Confiscation Case No. 10 of 2020 (Annexure B to the counter affidavit), while initiating confiscation proceeding.

It is well settled law that the Act being a stringent Act, the stricter compliance of the procedural safeguards have to be made by the authorities but in the present case, we are constrained to observe that the procedure has not been followed. This shows the callous manner in which the authorities under the Act are discharging the quasi judicial functions.

Since the confiscation proceeding has been initiated, we are not inclined to interfere in the matter. However, it is expected from the Collector, Madhepura to conclude the proceeding of Confiscation Case No. 10 of 2020 strictly in



accordance with the provisions of the Act within a period of six weeks from the date of receipt/production of a copy of this order. It is open to the Collector to see whether the report has been transmitted to him in accordance with provisions contained in Section 58(1) of the Act or not. Needless to say, if the confiscation proceeding is not concluded for no laches on the part of the petitioner, the petitioner will be at liberty to move this Court again.

With the aforesaid observation/direction, this writ application stands disposed of.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

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CAV DATE	
Uploading Date	
Transmission Date	

