

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17980 of 2019

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Harendra Giri, Son of Shankar Giri, Resident of Village-Paharpur, P.S.-
Gopalpur, District-Gopalganj.

... .. Petitioner/s

Versus

1. The State of Bihar, through the Director General Cum Inspector General of Police, Patna.
2. The District Magistrate, Gopalganj.
3. The Superintendent of Police Gopalganj.
4. The Dy. S.P., Gopalganj
5. The Officer In-Charge Mirganj Police Station, Gopalganj.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Mohammad Sufyan, Advocate
For the Respondent/s : Mr.Md. N. H. Khan, SC-1

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
and
HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

3 20-01-2020 Heard learned counsel for the petitioner and learned
AC to SC-1 for the respondent-State.

The present writ application has been filed for release of Maruti Celerio X car in favour of petitioner, which has been seized in Mirganj P.S. Case No. 192 of 2019 registered for the offences punishable under Sections 30(a) and 37(b)(c) of 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 by the petitioner as stipulated in paragraph no.1 of the writ application reads as follows :-



“That this is an application under the writ jurisdiction of the Hon’ble Court for issuance of appropriate writ/writs, order/orders, direction/directions to the respondent to release the vehicle (Maruti Celerio X) of the petitioner bearing Chasis No. (Vehicle ID) MA3ETDE1500641926, Engine No. K10BN2232688, Color Peart Arctic white 2HJ, which has been illegally seized in connection with Mirganj P.S. Case No. 192/2019 U/s 30(a),37(b)(c) of the Bihar Prohibition and Excise Act, 2016.”

The prosecution case got initiated on the basis of written report of Vishwambhar Manjhi, Assistant Sub-Inspector of Police, Mirganj Police Station submitted to Station House Officer, Mirganj Police Station, to the effect that on 06.08.2019 at 5.05 P.M. during patrolling, the vehicle in question was intercepted, from which Rahul Giri and Faiyaz Ansari were apprehended, who were in intoxicated condition and from the vehicle in question 360 ml of Indian Made Foreign Liquor was recovered, leading to registration of Mirganj P.S. Case No. 192 of 2019 for the offences punishable under



Sections 30(a) and 37(b)(c) of Bihar Prohibition and Excise Act, 2016.

It is submitted by learned counsel for the petitioner that neither the petitioner was present at the spot nor he had any information or knowledge about the liquor being kept in the vehicle in question. Hence, the presumption of innocence, in view of the satisfactory explanation as envisaged under Section 32 of the Act would arise in his favour. The petitioner is the registered owner of the vehicle in question. The invoice has been brought on record as Annexure-1 series and certificate of registration has been brought on record by way of Annexure-3 to the supplementary affidavit. The vehicle in question is rotting under open sky. It is further submitted that the FIR was registered on 06.08.2019 and the petitioner has received the notice of initiation of confiscation proceeding being Confiscation (Excise) Case No. 430 of 2019 on 19.09.2019. Hence, it is violation of statutory provisions under Section 58(1) of the Act which mandates that the seizing or detaining authority should transmit the report without any delay. It is further submitted that only 360 ml of Indian made foreign liquor has been seized. It does not suggest that the vehicle in question was used for carrying the intoxicant or liquor as is envisaged under



Section 56(b) of the Act, hence, it was not liable for confiscation. If it was not liable for confiscation there was no requirement to transmit the report under Section 56(b) of the Act. The petitioner is not named in the FIR. It is further submitted that the recommendation/report under Section 58(1) of the Act has been transmitted to the S.P., Gopalganj, whereas Section 58(1) of the Act envisages that the report has to be transmitted by the seizing or detaining authority to the District Collector. It is further submitted that under Section 73(e) of the Act, the police officer not below the rank of Sub-Inspector is authorized to seize the vehicle under the Act. In the present case, the Assistant Sub-Inspector of Police has made the seizure. Hence, not only the confiscation but the very seizure has got vitiated.

Learned AC to SC-1 submits that the seizure from the vehicle in question is not in dispute and once the seizure has been made, the vehicle in question is liable for confiscation and in the present case, the confiscation proceeding has already been initiated. Learned counsel for the State has not controverted the factum of seizure by Assistant Sub-Inspector of Police contrary to the provision under Section 73(e) of the Act and transmission of the report under Section 58(1) of the Act by an authority not



prescribed under the Act.

It is well settled law that the Act being a stringent one, the stricter compliance of the procedural safeguards has 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. No doubt, no time limit has been fixed under Section 58 of the Act for conducting confiscation proceeding but it does not mean that it should be kept pending for indefinite period, allowing the seized vehicle to reduced into a junk.

Considering the rival submissions of the parties, since the confiscation proceeding has already been initiated, we are not inclined to interfere, but we give liberty to the District Magistrate, Gopalganj to decide it as a preliminary issue, whether the seizure has been made by the authority prescribed under Section 73(e) of the Act, or whether the transmission of the report has been made by the authority prescribed under Section 58(1) of the Act. However, the entire exercise is expected to be concluded within a period of six weeks from the date of receipt/production of a copy of this order in accordance with law. Needless to say, if the confiscation proceeding is not



concluded within the stipulated time period of six weeks, for no laches on the petitioner, the petitioner will be at liberty to move this Court again.

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

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

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