

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18067 of 2019

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Ram Kishor Singh S/o Ram Lochan Mahto R/o Village- Sukki (Ward no.- 4),
P.S. Khajauli, District- Madhubani.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Excise Department,
Government of Bihar, Old Secretariat, Patna.
2. The District Magistrate, Madhubani.
3. The Superintendent of Police, Madhubani.
4. The District Supply Officer (Excise), Madhubani.
5. The S.H.O. Khajauli, District- Madhubani.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Bimal Kumar
For the Respondent/s : Mr.Vivek Prasad (Gp7)

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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 : 24-01-2020

Heard Mr. Bimal Kumar, learned counsel for the
petitioner and Mr. Vivek Prasad, learned G.P.-7 for the
respondents.

The present writ application has been preferred for
release of TVS Apache motorcycle bearing Registration No. BR-
32AA-1093 in favour of the petitioner, which has been seized in
connection with Khajauli P.S. Case No.116 of 2019 registered for
the offences punishable under Sections 272, 273/34 of the Indian
Penal Code, 1860 and 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 prayed for by learned counsel for the petitioner at paragraph No.1 of writ application reads as :-

“1. That the present civil writ application is being filed for issuance of appropriate writ / writs, order/orders and direction/directions to the respondents authority to release of vehicle-Motorcycle bearing registration no.BR-32AA-1093, Chasis no.MD634BE4XK2A10398, Engine No.BE4AK25A4505 which was seized by Charitra Ram, ASI of Khajauli Police Station under District -Madhubani, when the petitioner was trying to flee away having seen the police party but arrested by the police and in course of search 18 litres of Nepali country made Sofiya wine (60 bottle of 300 ml.) was recovered from the Motorcycle and on that basis a FIR bearing Khajauli P.S. Case No.116 of 2019 dated 27.07.2019 u/s 272, 27334 of I.P.C. (G.R. 1349/2018) under Section 30(a) of Bihar Prohibition and Excise (Amendment) Act, 2016 was registered against the arrested named accused person and others.”

The prosecution case got initiated on the basis of the written report submitted by Charitra Ram, A.S.I. before the S.H.O., Khajauli P.S. is to the effect that on 27.07.2019 at 4:00 P.M. during evening patrolling two persons riding on a motorcycle and on seeing the police tried to flee away from the scene after leavign motorcycle and a bag but on chase being made,one person



was apprehended while other succeeded to flee away. The apprehended accused disclosed his name as Ranjeet Kumar and also disclosed the name of other person as Ajay Singh. During frisking from the bag, total 18 litres of Nepali Sofia country made liquor were recovered and the vehicle in question was seized, leading to registration of Khajauli P.S. Case No.116 of 2019.

It is submitted by learned counsel for the petitioner that the petitioner was not aware about illicit liquor being transported through his motorcycle, since at the time of seizure he was not travelling on the motorcycle.

It is further submitted by learned counsel for the petitioner that the petitioner is the registered owner of the vehicle in question and certificate of registration has been brought on record as Annexure-2. It is further submitted that though Confiscation Case No. 972 of 2019-20 has been initiated, but it has not been concluded till date and the vehicle in question is rotting in the open sky.

It is further submitted that the seizure has been made by a police officer of A.S.I. rank 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. Section 58 (1) of the Act mandates that anything which 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, but the order dated 19.01.2020 passed in Confiscation Case No.972 of 2019-20 by the Collector-cum-District Magistrate, Madhubani, as contained in Annexure-A to the counter affidavit reflects that the proposal for confiscation of the vehicle in question has been transmitted by the Sr. Superintendent of Police, Madhubani while the seizure was made by the A.S.I. It further appears that notice has been issued to Kanhaiya Yadav, Ragha Kumar and Govind Kumar and not to the petitioner. The petitioner was not made an accused initially in the FIR.

Mr. Vivek Prasad, learned G.P.7 made submission on the basis of counter affidavit filed on behalf of respondents, that confiscation proceeding has been initiated and notices have been issued to persons concerned. However, he has controverted that the petitioner was neither named in the FIR nor the notices were issued to the petitioner. Hence, in that background, he prays that the vehicle in question may not be released.

Having heard learned counsels for the parties and considering their rival submissions, as also the fact that the FIR was lodged and seizure has been 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, we are of the considered view that the very seizure appears to be de hors the provisions of the Act. Section 73(e) of the Act reads as under :-

“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; or”

From the order dated 19.01.2020 passed by District Magistrate-cum-Collector, Madhubani in Confiscation Case No.972 of 2019-20, it appears that confiscation proceeding has been initiated on the basis of report of Superintendent of Police, Madhubani vide Memo No.445 dated 18.01.2020 whereas the provisions under Section 58 (1) of the Act mandates that anything 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. But in the present case, it appears from perusal of order dated 19.01.2020, passed in Confiscation Case No. 972 of 2019-20, as contained in Annexure-A to the counter affidavit that neither the FIR nor the report of the Sr. Superintendent of Police nor the materials submitted along with the report suggest, as to who is the owner of the vehicle in question. Hence the entire confiscation proceeding has been conducted without following the procedures of the Act.



It is well settled law that if the Act in question is a stringent and special Act, then the procedural, safeguards have to be followed strictly, but in the present case, we find that neither the procedure of seizure as prescribed under Section 73(e) of the Act nor presumption of report by the detaining authority has been followed.

Section 58(1) mandates presumption of report without any delay but in the present case, the FIR was registered as far back as on 27.07.2019, whereas this Court on 17.12.2019, on the prayer made by learned counsel for the State had adjourned the matter, enabling him to file the counter affidavit, but it appears that the proposal was transmitted by the Sr. Superintendent of Police only after 17.12.2019 and on the next day, Collector without ascertaining the owner of the vehicle in question, has passed the order initiating the confiscation proceeding. Moreover the petitioner claiming to be the owner of the vehicle in question is not a party in the confiscation proceeding

In the facts and circumstances of the present case, no useful purpose will be served in allowing the vehicle to rot under open sky leading to a complete waste of public money. The practice of keeping the vehicle in such condition and allowing it to reduce it into a junk, would ultimately result into waste of public



money, which has been deprecated by the Supreme Court in the case of **Sunderbhai Ambalal Desai Vs. State of Gujrat** and other analogous cases reported in **(2002) 10 SCC 283** and in the case of **General Insurance Council and Ors. Vs. State of Andhara Pradesh and Ors.** reported in **(2010) 6 Supreme Court Cases 768.**

Accordingly, we direct that the same be released provisionally till the conclusion of the trial or till the conclusion of confiscation proceeding, if any, on the following conditions to the satisfaction of learned Collector, Madhubani :

(I) The petitioner will produce the proof of valid certificate of registration/ownership in his favour including the insurance papers;

(II) The petitioner will furnish surety bond of Rs. 50,000/- but not in the form of bank guarantee or cash, with two sureties of the like amount to the satisfaction of the Collector, Madhubani or the confiscation authority, as the case may be;

(III) The petitioner shall give an undertaking on affidavit that he will not deal with the vehicle in question or alienate or encumber the same creating any kind of adverse interest against the interest of the State during the pendency of the confiscation proceeding;



(IV) The petitioner will not use the vehicle for any illegal purpose and as and when required, he will produce the vehicle in question before the court or authority concerned.

(V) At the time of release of the vehicle in question, the concerned court or authority shall get prepared photo copy of the vehicle in question duly certified in presence of the petitioner;

(VI) Panchnama of the vehicle in question shall also be prepared and will be kept on record which may be used as secondary evidence and the petitioner will furnish an affidavit incorporating therein an undertaking not to challenge the said photo copy or panchnama so prepared in his presence at the time of release of the vehicle in question for use in course of the trial or confiscation proceeding as the case may be.

The entire exercise will be done by the learned Court below within ten days of receipt/production of a copy of this order.

It is made clear that we have not expressed any opinion with regard to the merits of the accusation or with regard to the ownership of the vehicle in question, but it is expected from the Collector-cum-District Magistrate, Madhubani, to conclude the proceeding of Excise Confiscation Case No. 972 of 2019-20 within a period of six weeks, in view of the discussions made above and as per the provisions of the Act.



Accordingly, the writ application is disposed of to the extent as indicated above.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

sanjeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.02.2020
Transmission Date	NA

