IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21262 of 2019

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Shubham Jha, S/o Govind Jha, Resident of Shivpuri, Ward No.11, P.S.-Bahadurganj, District-Kishanganj.

... ... Petitioner/s

Versus

1. The State of Bihar through the District Magiste, Kishanganj.
2. The Excise Commissioner, Patna.
3. The Collector, Kishanganj.
4. The Superintendent of Police, Kishanganj.
5. The District Transport Officer, Kishanganj.
6. The Oficer-in-Charge, Bahadurganj Police Station, Kishanganj

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dhananjaya Nath Tiwari, Adv.

For the Respondent/s : Mr. Kumar Manish, 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 : 27-02-2020

The present writ application has been taken out of turn with the consent of the parties.

Heard learned counsel for the petitioner and learned SC-5 for the respondent-State.

The present writ application has been filed for setting aside the order dated 09.07.2019 passed in Confiscation case No. 59 of 2019 by the Collector-cum-District Magistrate, Kishanganj whereby the Tata zest XM car bearing registration No.BR37N-3076 has been confiscated, seized in connection with Bahadurganj P.S. Case No. 76 of 2019 for the offence punishable under Section 30(a) of the Bihar Prohibition and Excise Act, 2016, as amended by Amendment Act 8 of 2018, (hereinafter referred to as 'the Act'). Further prayer has been made for release of the vehicle in question. The relief as prayed for, as stipulated in paragraph no.1 of the petition reads as follows:-

> "1. That this application being filed on behalf of the petitioner for setting aside the order dated 09.07.2019 passed in Confiscation Case No. 59 of 2019 by the learned Collector-cum-District Magistrate, Kishanganj by which a Tata zest XM car bearing regd. No. BR37N 3076, Chesis No. MAT623231HPB08265 and engine No. REVTRN01BSYPO3422 has been confiscated in terms of Section 58 of Bihar Excise Amendment Act, 2016 and /or the vehicle of the petitioner be released in favour of the petitioner to the satisfaction of learned Collector, Kishanganj on such term or terms as this Hon'ble court deems fit and proper."

The prosecution case got initiated on the basis of written report of Masood Alam, S.I. of Police, Bahadurganj Police Station is to the effect that on 16.03.2019, during vehicle check, the vehicle in question was intercepted when on seeing the police party three persons tried to escaped from the scene, but on chase, one of them was apprehended, who disclosed his name as Subham Jha. From the vehicle in question, 57.120 litres of Indian Made Foreign Liquor were recovered.

It appears that on the recommendation of the Superintendent of Police, Kishanganj, transmitted through Letter No.645, dated 07.05.2019, to the Collector, Kishanganj, Confiscation Case No. 59 of 2019 was initiated. Notice was served upon the petitioner, subsequently, the petitioner appeared and filed his show cause. Ultimately, the District Magistrate, Kishanganj, vide order dated 09.07.2019, passed in Confiscation Case No. 59 of 2019, confiscated the Tata zest XM car bearing registration No. BR37N 3076 and directed the District Transport Officer to get the vehicle evaluated and the Superintendent of Excise, Kishanganj was further directed to auction sale the vehicle in question, in accordance with law and deposit the said amount in the treasury.

It is submitted by learned counsel for the petitioner that the petitioner claims to be the registered owner of the vehicle in question and certificate of registration has been brought on record, as Annexure-7. It is further submitted that against the final order dated 09.07.2019, passed in Confiscation case No. 59 of 2019 by the Collector-cum-District Magistrate, Kishanganj, the petitioner has filed appeal and will further file application for condonation of delay and stay of the auction of the vehicle in question. Since 28th February, 2020 is the date fixed for auction sale, the petitioner confines his prayer for a direction to the concerned authority not to auction sale the vehicle in question till disposal of the appeal.

It is submitted by Mr. Kumar Manish, learned SC-5 that the present writ application is not maintainable in view of Section 92(2) of the Act as it mandates appeal against the order passed by the Collector before the Excise Commissioner within ninety days of the order complained of.

Considering the fact that the petitioner has preferred appeal against the final order, in the confiscation proceeding, but there is nothing on record to suggest that such appeal was filed along with an application for condonation of delay, if such application is filed by the petitioner, the appellate authority is expected to consider application for condonation of delay in view of the fact that the writ application of the petitioner was pending before this Court and dispose of the appeal within a period of three months from today.

Needless to say, in case the vehicle in question has not been auctioned sold till date, it will not be put on auction sale till the disposal of the appeal pending before the appellate authority.

It is expected from Mr. Kumar Manish, learned SC-5 to communicate the authority concerned the order of this Court today itself.

Let a copy of this order be served upon the learned SC-5.

With the observation aforesaid, the writ application stands disposed of.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

Ashwini/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	27.02.2020
Transmission Date	N.A.