

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22326 of 2019

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Mandeep Singh S/o Shri Narain Singh Resident of Street No. 5, Sheed Bhagat Singh Nagar, Near Govt. Seed Farm P.S.- Firozpur, Distt.- Firozpur, State-Punjab, Authorized Signatory of Ess Kay Fincorp Ltd., Registered Office at G1, G2, New Market, Khasa Kothi Circle, Jaipur, Rajasthan

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary
2. The Excise Commissioner Bihar Prohibition and Excise Act 2016
3. The Excise Officer Sasaram (at Rohtas), Bihar, Under Bihar Prohibition and Excise Act, 2016
4. The District Collector Sasaram at (at Rohtas), Bihar
5. The Superintendent of Police Sasaram at (at Rohtas), Bihar
6. The Officer in Charge of Dihri Police Station, Rohtas, Bihar
7. Rakesh Kumar S/o Des Raj
8. Ritu Rani W/o Rakesh Kumar

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Rohit Kumar
For the Respondent/s : Mr.Kumar Manish (Sc5)

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 24-08-2020

Heard learned counsel for the parties.

Petitioner has prayed for following reliefs:-

- a. For issuance of appropriate writ order/direction commanding the respondents authorities to release the vehicle bearing Registration No.BP03AP-9469, Chassis No.MC2G3LRCOJH151534, Engine No.E424CDJH234223 in favour of the petitioner, who



is financier of the seized vehicle which was seized in Dehri(Town) P.S. Case No.125/2019 dt. 28.02.2019 under Sections 30(a), 35, 38 of Bihar Prohibition and Excise Act, 2016.

b. For issuance of appropriate writ/order/direction commanding the respondent authorities to release the vehicle of petitioner during the pendency of criminal case.

c. For issuance of appropriate writ/order/direction commanding the respondent authorities to make proper arrangement for safe custody of the said vehicle which is kept in open sky.

d. Any other order/orders, direction/directions, relief/reliefs as your Lordship deem fit and proper in the facts and circumstances of this case.

Petitioner claims to be employee of ESS KAY Finance Corporation Limited having its registered office at Jaipur which is registered as non-banking company under the Companies Act, 1956 and had provided loan of rupees 17 lacs to respondent nos.7 and 8 for purchase of a truck and loan amount was to be repaid with interest on monthly instalments, however, they failed to repay the loan amount and did not pay even a single monthly instalment and in terms of agreement, the company was entitled to take possession of the vehicle and steps were taken for possession of the vehicle, however, the company came to know that vehicle was seized by police for transportation of illicit liquor giving rise to Dehri (Town) P.S. Case No.125/2019



dated 28.02.2019 registered under Sections 30(a), 35, 38 of Bihar Prohibition and Excise Act, 2016.

Counter affidavit has been filed on behalf of Superintendent of Police, Sasaram, i.e. Respondent no.5 in which it has been stated that huge quantity of illicit foreign liquor was recovered from the truck and same was seized under the Excise Act and test report confirmed that seized articles were alcohol and as the vehicle was used for transportation of illicit liquor, and as such, the recommendation was made to the District Magistrate, Rohtas vide letter dated 11.4.2019 to initiate confiscating proceeding against the seized vehicle.

Counter affidavit has also been filed on behalf of District Collector, Sasaram in which it has been stated that from the papers recovered from said truck and from the engine number and chassis number, it was ascertained that registered owner of the seized vehicle was Rakesh Kumar (respondent no.7) and on recommendation made by police, confiscation case no.188/19 was initiated on 17.12.2019 and notices were issued to the owner of seized vehicle and it appears that seized truck was being plied with fake registration number.

Notices were issued to the owner of the vehicle, respondent no.7 by the District Magistrate, Rohtas, however, it



could not be ascertained from the counter affidavit whether he has appeared in the confiscation proceeding or not. Notices were issued by this Court to the owner of the vehicle (respondent no.7) also by both process.

It is submitted on behalf of petitioner that there was an hire-purchase agreement between the financier (petitioner) and borrower (respondent No.7) and in terms of agreement, the financier remained owner of the vehicle till repayment of loan amount with interest and as in present case, borrower had not paid a single monthly instalment, petitioner was entitled to take back the possession of the vehicle as such, he is a necessary party in the confiscation proceeding and is also entitled for release of the vehicle in his favour.

Since petitioner has approached this Court directly without approaching the District Magistrate-cum-Confiscating Officer, Sasaram, where the confiscation case is pending, the writ petition is disposed of with liberty to petitioner to file a petition to be added as a party in the confiscation proceeding being financier of the vehicle and in terms of hire-purchase agreement, he remains the owner of the vehicle and the borrower although had possession of the vehicle but remains as a trustee and if any such petition is filed before the District



Magistrate (Confiscating Authority) along with relevant documents of loan sanction and hire–purchase agreement, petitioner may be added as a party in the confiscation proceeding and same shall be decided after giving reasonable opportunity to petitioner before passing the final order, if not already passed.

(S. Kumar, J)

Sanjay Karol, CJ : I agree

(Sanjay Karol, CJ)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	03.07.2020
Uploading Date	
Transmission Date	NA

