

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23239 of 2019

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Durgesh Tiwari, S/o Kamla Tiwari, r/o Village Midhi Balia, P.O. and P.S. Balia, District Balia (UP).

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary Excise Department, new Secretariat Patna.
2. The District Magistrate-cum-Collector, Siwan.
3. The Superintendent of Police, Siwan.
4. The Excise Superintendent, Siwan.
5. The Excise Inspector District Siwan.
6. The Investigating Officer CIII 211/2019 Siwan.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Chandra Kant, Adv.
For the Respondent/s : Mr.Vikash Kumar (Sc11)

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

4 14-01-2020 Heard learned counsel for the petitioner and learned counsel appearing on behalf of the State.

Learned counsel for the petitioner invites our attention to our earlier order dated 09.01.2020 passed in CWJC No. 20598 of 2019, titled as Md. Shaukat Ali Vs. The State of Bihar & Ors., and wants the petition to be disposed of in terms thereof.

With the consent of the learned counsel for the parties, the writ petition stands disposed of in the following



terms.

The petitioner prays for provisional release of Passion Pro motor cycle bearing Registration No. BR 31L 7795, which has been seized in connection with Siwan Excise Case No. CIII 211 of 2019 for the offences punishable under Sections 30(A) of the Bihar Prohibition and Excise Act, 2016.

It is continued practice of this Court that in cases of drunken driving; no recovery from the vehicle; recovery of less than commercial quantity; where ex-facie, vehicle is not liable to be confiscated; where there is inordinate delay in initiating proceedings for confiscation of the vehicle etc., this Court has been directing the State to provisionally release vehicle/property, subject to initiation/conclusion/finalisation of the confiscatory proceedings, as the case may be. Reference can be made to the judgments/ orders passed by different co-ordinate Benches of this Court, viz:-

(i) Judgement dated 22.03.2018 passed in CWJC No.5049 of 2018, titled as Diwakar Kumar Singh versus The State of Bihar & Ors.;

(ii) order dated 31.07.2018 passed in CWJC No.13162 of 2018 titled as Rajesh Kumar Pandit @ Rajesh Pandit Vs. The State of Bihar & Ors.;

(iii) order dated 31.07.2018 passed in CWJC No.14242 of 2018 titled as Amar Kumar Vs. The State of Bihar & Ors.;

(iv) order dated 12.02.2018 passed in CWJC No.2437 of 2018 titled as Mahendra Manjhi Vs. The State of Bihar & Ors.;



(v) judgement dated 12.02.2018 passed in CWJC No.2470 of 2018 titled as Laxman Das @ Lakshman Ravidas Vs. The State of Bihar & Ors.;

(vi) order dated 11.09.2017 passed in CWJC No.13158 of 2017 titled as Sanjay Kumar Versus The State of Bihar & Ors.;

(vii) order dated 27.03.2018 passed in CWJC No.5528 of 2018 titled as Bikash Kumar Vs. The State of Bihar & Ors.;

(viii) order dated 27.03.2018 passed in CWJC No.5528 of 2018 titled as Bikash Kumar Versus The State of Bihar & Ors.;

(ix) order dated 01.05.2018 passed in CWJC No.7755 of 2018 titled as Anandi Prasad Versus The State of Bihar & Ors.;

(x) order dated 01.05.2018 passed in CWJC No.7644 of 2018 titled as Suraj Ram Versus The State of Bihar & Ors.;

(xi) order dated 07.08.2018 passed in CWJC No.15435 of 2018 titled as Kalesar Chaudhari Versus the State of Bihar & Ors.;

(xii) judgement dated 18.01.2019 passed in CWJC No.1215 of 2019 titled as Raushan Kumar @ Raushan Kumar Singh Versus The State of Bihar & Ors.;

(xiii) judgement dated 29.01.2019 passed in CWJC No.1620 of 2019 titled as Asharfi Kumar @ Rakesh Kumar Versus the State of Bihar & Ors.;

(xiv) judgement dated 08.02.2019 passed in CWJC No.2380 of 2019 titled as Avinash Kumar Versus the State of Bihar & Ors.;

(xv) judgement dated 29.01.2019 passed in CWJC No.1648 of 2019 titled as Roshan Kumar Versus The State of Bihar & Ors.; and

(xvi) judgement dated 22.01.2019 passed in CWJC No.1314 of 2019 titled as Shanti Devi Versus The State of Bihar & Ors.

In fact, in CWJC No. 5049 of 2018 titled as **Diwakar Kumar Singh Versus the State of Bihar & Ors.** the Court issued the following directions:-

“That apart, in the confiscation proceedings,



the confiscating authority shall take note of the provisions of Section 56 of the Bihar Prohibition and Excise Act, 2016 and record a positive finding after hearing the petitioner as to whether when the petitioner is found or the vehicle is found to be used by a person in drunken condition and no liquor is seized from the vehicle or when the vehicle is not used for transportation of liquor, whether the provision of Section 56 of the Act will apply. It shall be mandatory for the confiscating authority to decide this issue before passing any order on the confiscation proceedings. The confiscating authority shall consider the provision of Section 56 of the Act, apply his mind and pass a speaking order with regard to confiscation initiated. Without deciding the aforesaid issue as a preliminary issue, further proceedings in the confiscation proceedings shall be prohibited.

We further request the office of the Advocate General to communicate this order to all the District Magistrates in the State of Bihar, who would be mandated to pass an appropriate order in such cases where the vehicle has been confiscated under Section 56 of the Act only on the allegation that the vehicle was being driven in a drunken condition and no liquor was seized from the vehicle nor the vehicle used for transportation or carriage of liquor. The issue shall be decided by each and every District Magistrate before proceeding in the confiscation proceedings where the allegation is about the vehicle being driven in a drunken condition and no liquor was found from the possession of the vehicle.

It shall be the duty of the Advocate General to communicate this order to each and every District Magistrate and inform the Registrar General of this Court. In spite thereof, if we find that the District Magistrates are passing confiscation order without addressing this issue first, we may consider initiating contempt proceedings against the concerned District Magistrate.”

It is further seen that in CWJC No.15003 of 2019 titled as **Shobha Devi Versus The State of Bihar & Ors.** the



Court observed as under:-

“6. On examination of aforesaid fact, particularly allegation of the petitioner that in a court proceeding before the learned Special Judge, Excise, a false information was given, we are of the opinion that the court of learned Special Judge, Excise would be competent court to pass an appropriate order, in view of provisions contained in Section 340 of the Code of Criminal Procedure, 1973.

7. Accordingly, the petitioner is granted liberty to file appropriate petition before the learned Special Judge, Excise for prosecuting the concerned police official.

8. So far as claim of compensation is concerned, obviously on going through the material on record, since there was no recovery of liquor from the vehicle and it was a case, in which, the occupants of the vehicle were alleged to be in drunken condition and were creating nuisance, though were liable to be arrested. In any event, the vehicle was not required to be seized, since it was not liable to be confiscated.

9. In such situation, we are of the opinion that it is a fit case, in which, we may direct to pay adequate compensation to the petitioner, being owner of the vehicle, to the tune of Rs.75,000/- (seventy five thousand), however, Sri Kumar Manish, learned Standing Counsel – 5 requests for granting an opportunity for obtaining detailed instruction and filing counter affidavit in the matter. The request of Sri Kumar Manish, S.C.-5 is allowed for filing counter affidavit so that final order may be passed.

10. It goes without saying that before filing counter affidavit, the respondent no. 4/Superintendent of Police, Darbhanga may conduct a preliminary inquiry regarding the conduct of the police officer, who had seized the vehicle of the petitioner and state all those facts in its counter affidavit, which must be filed by 29th of November, 2019. The affidavit must be sworn by the Superintendent of Police himself.

11. It further goes without saying that if after considering all the facts, including counter affidavit, which is proposed to be filed, the Court comes to the conclusion that the petitioner is entitled for claim of



amount of compensation, which has been referred hereinabove, the said compensation amount must be recovered from the pocket of the police officer, who was responsible for such illegal seizure.”

Despite the same, only before this Court, when matters of similar nature came up for hearing on 16th of December, 2019, the learned Advocate General assisted by Shri Vikash Kumar, learned Standing Counsel-11, and Shri Vivek Prasad, learned Government Pleader-7, vehemently opposed the petitions for release of the vehicles. Consequently, the writ petitions were disposed of with the directions to the appropriate authorities to positively initiate/conclude confiscatory proceedings within a period of 30-45 days.

Without adjudicating the petitioner’s petition on merits, we are of the considered view that interest of justice would be best met, if the petition is disposed of in the following terms:-

(a) Since the vehicle in question stands seized in relation to the FIR which stood registered long ago, in case confiscation proceeding has not been initiated, it must be initiated within a period of 15 days from today and that confiscation proceeding stands initiated, we direct the appropriate authority under the Act to forthwith ensure that such proceedings be concluded not later than 30 days.

(b) The petitioner undertakes to make himself available in the office of the concerned appropriate authority empowered under Section 58 of the Act i.e. District Collector, in his/her office on 04.02.2020 at 10:30 A.M.



(c) We further direct the appropriate authority to positively conclude the confiscation proceeding within next thirty days on appearance of the petitioner. If for whatever reason, such proceeding cannot be concluded, in that event it shall be open for the authority to take such measures, as are permissible in law, for release of the vehicle in question by way of interim measure, on such terms as may be deemed appropriate, considering the attending facts and circumstances of the case.

(d) If eventually, the appropriate authority arrives at a conclusion that the property is not liable to be confiscated, it shall be open for the petitioner to seek damages in accordance with law and have appropriate proceedings initiated against the erring officials/officers.

Learned counsel for the petitioner states that the certified copy of the order shall be made available to the concerned District Collector on the date so fixed.

For future guidance, where parties have not approached this Court, we issue the following direction:-

The expression “reasonable delay” used in Section 58 of Chapter VI of the Act, in our considered view, necessarily has to be within a reasonable time and with dispatch, which period, in our considered view, three months time is sufficient enough for any authority to adjudicate any issue, more so, when we are dealing with confiscatory proceedings.

We clarify that we have not adjudicated the writ petition on merits and it shall be open for the parties to take all stand in the adjudicatory proceedings and wherever parties are



aggrieved, it shall be open to them to initiate appropriate proceeding before the appellate authority.

Learned counsel for the State also undertakes to communicate the order to the concerned appropriate authority i.e. District Magistrate, empowered under Section 58 of the Act.

(Sanjay Karol, CJ)

(Anil Kumar Upadhyay, J)

K.C.Jha/-

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