

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24971 of 2019

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Kuldip Sah, Son of Shankar Sah, Resident of Village-Bhawanipur, Police Station-Bhawanipur in the district of Purnea.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Excise, Government of Bihar, Patna.
2. The Principal Secretary, Excise Department, Government of Bihar, Patna.
3. The District Magistrate-cum-Collector, Purnea.
4. The Superintendent of Police, Purnea.
5. The Officer-in-charge, Bhawanipur P.S. in the district of Purnea.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Sunil Kumar, Advocate
For the Respondent/s	:	Mr.Vikash Kumar, SC-11
		Mr. S.C. Raman, AC to SC-11

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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 : 23-01-2020

Heard Mr. Sunil Kumar, learned counsel for the petitioner and Mr. S.C. Raman, learned A.C. to S.C. - 11 for the respondents.

The present writ application has been preferred for release of motorcycle of the petitioner bearing Registration No. BR11AC-9084, which has been seized in connection with Bhawanipur P.S. Case No. 213 of 2018, registered for the



offences punishable under Sections 272, 273 of the Indian Penal Code and 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').

The reliefs as prayed for in paragraph 1 of the writ application reads as follows:-

“1. That this is an application for issuance of an appropriate writ/writs, order/orders, direction/directions for the following reliefs:-

I. To direct the respondents to release the Motorcycle of the petitioner bearing Reg. No. BR11AC-9084 in favour of the petitioner, which has been seized in connection with Bhawanipur P.S. Case No. 213 of 2018 registered for the offence punishable Under Sections 272, 273 I.P.C. and Section 30(a) Bihar Prohibition and Excise Act, 2016.

II. Also for any other relief/reliefs for which the petitioner is found to be entitled in the eye of law.”

The prosecution case got initiated on the basis of



the written report submitted by Lakhi Ram, A.S.I. of Police, submitted before the S.H.O. of Bhawanipur Police Station is to the effect that on 03.11.2018, at 6.30 P.M., during patrolling in law & order, a secret information was received that one person is carrying liquor on his motorcycle, whereupon, the vehicle in question has been intercepted. The person driving the motorcycle disclosed his name as Prabhat Kumar Rajak @ Paro Rajak and from motorcycle in question, 5 bottles of 180 ml each, i.e., total 900 ml Indian Made Foreign Liquor were recovered and the vehicle in question was seized, leading to registration of Bhawanipur P.S. Case No. 213 of 2018.

It is submitted by learned counsel for the petitioner that the FIR was registered on 03.11.2018, whereas the writ application was filed on 11.12.2019 and thereafter, the recommendation was sent by the previous I.O. vide letter No. 158/19 dated 18.12.2019 to the Collector, Purnea. From the tabular chart given in paragraph 6 of the counter affidavit filed on behalf of respondent nos. 3, 4 and 5, it appears that confiscation proceeding vide Excise Case No. 40/20 has been initiated, obviously, in order to escape the rigors of the present proceeding. It is further submitted that the petitioner is the registered owner of the vehicle in question and certificate of



registration has been brought on record as Annexure-1. It is further submitted that there is no likelihood of conclusion of confiscation proceeding and the vehicle in question is rotting under the open sky.

Learned AC to SC-11 submits that on proper recommendation, confiscation proceeding being Excise Case No. 40/20 has been initiated. However, the counter affidavit does not depict as when the report was submitted under Section 58(1) of the Act. The counter affidavit also does not suggest that any notice with regard to confiscation proceeding has been issued to the petitioner.

Having heard learned counsels for the parties and considering their rival submissions, we are of the considered view that in the present case, the FIR has been 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 any officer below the rank of Sub Inspector of Police. Hence, the very seizure appears to be de hors the provisions of the Act. The letter of Sub-divisional Police Officer, Dhamdaha dated 31.12.2019, contained in Annexure-A to the counter affidavit, reflects that the recommendation was made by the previous I.O., admittedly, it was neither by seizing nor by



detaining authority under Section 58(1) of the Act, which mandates that the report must be transmitted to the Collector by seizing or detaining authority without inordinate delay. In the present case, obviously, the recommendation was made in December, 2019, i.e., after filing of the present writ application which clearly shows that the whole proceeding is being conducted in a very callous manner.

Considering the above discussions, we are constrained for the release of the vehicle in question to the satisfaction of the District Magistrate -cum- Collector, Purnea provisionally till the conclusion of confiscation proceeding on the following conditions:-

(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 District Magistrate -cum- Collector, Purnea;

(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 authority concerned.

(V) At the time of release of the vehicle in question, the concerned 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 District Magistrate -cum- Collector, Purnea 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 this case or with regard to the ownership of the vehicle in question, but it is expected from the Collector-cum-District Magistrate, Purnea, to



conclude the confiscation proceeding strictly under the provisions of the Act.

Accordingly, the writ application stands disposed of.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

DKS/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	31.01.2020
Transmission Date	N/A

