

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.283 of 2020

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Ravindra Kumar @ Ravindra Kumar Yadav, Son of Upendra Yadav, Resident of Village-Dudhela, P.S. Dighiya, District-Supaul.

... .. Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Department of Excise and Prohibition Govt. of Bihar, Old Secretariat, Patna.
2. The District-Magistrate, Supaul.
3. The Superintendent of Police, Supaul.
4. The S.H.O. Kunauli Police Station, Supaul, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Gagan Deo Yadav
For the Respondent/s : Mr.Vikash Kumar (Sc11)

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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 : 13-01-2020

Heard Mr. Gagan Deo Yadav, learned counsel for the petitioner and learned A.C. to S.C.-11, appearing on behalf of the State.

This writ application has been preferred with a prayer for a direction to the respondents to release Hero Extreme Motorcycle bearing Registration No. BR50F-3766, which has been seized in connection with Kunauli (Dagmara O.P.) P.S. Case No.24 of 2019, registered under Section 30(a) of Bihar Prohibition and Excise Act, 2016 as amended by the Amendment Act 8 of 2018 (hereinafter referred to as 'the Act').



The relief claimed by the petitioner in paragraph No.1 of the writ application reads as follows :-

“1. That the present Civil Writ petition is being filed for release of vehicle Hero Extreme Motorcycle Registration No.BR50F-3766, Chasis No. MBLKC12EMGGE01402, Engine No. KC12EFGGE01812, belongs to the petitioner, which has been seized by Kanauli (Dagmara O.P.) Police Station (Arising out of Kunauli (Dagmara) P.S. Case No.24 of 2019 dated 18.05.2019 registered under Sections 30(a) of the Bihar Prohibition and Excise Act, 2016, pending in the Court of learned A.D.J.-II-cum-Special Judge (Excise), Madhubani. The matter for confiscation process has not been initiated against the vehicle which is lying in the open sky without any care.”

The factual matrix of the case as per the self statement of Rajeev Kumar, S.H.O. Kanauli P.S. is that on 17.05.2019 after having received secret information to the effect that illicit liquor is being carried on a motorcycle, a motorcycle was intercepted and on search, two plastic bags containing liquor were recovered and from the both bags, total 87 litres of Nepali liquor were recovered, leading to registration of Kanauli (Dagmara) P.S. Case No.24 of 2019 under Section 30(a) of the Act.

Though the statement has been made in paragraph No.12 of the writ application that confiscation proceeding has been initiated, however, learned counsel for the respondent-State drew out attention to Annexure-3, which is order dated 10.08.2019 passed in Excise Case No.288 of 2019 by the Collector, Supaul



whereby the motorcycle in question has been confiscated and the Superintendent, Excise, Supaul has been directed to get the valuation of motorcycle done.

Learned counsel for the State submits that now the final order of confiscation has been made, hence the application has now become infructuous.

Having considered the rival submissions made by the parties, we are of the view that at present, the application has become infructuous, in view of the final order having been passed in confiscation proceeding. Petitioner is now no longer the owner of the vehicle and in view of the provision under Section 61 of the Bihar Prohibition and Excise Act, the property has already been vested in the State of Bihar. Since there is a provision of Appeal under Section 92(2) under Chapter IX of the Act before the Excise Commissioner against the order of the Collector, the petitioner is at liberty to exercise the alternative remedy of appeal.

It is well settled law that exercise of jurisdiction under Article 226 of the Constitution of India is discretionary in nature and it has to be exercised, under self imposed restriction and has to be sparingly exercised where alternative and efficacious remedy is available.



However, the discretionary jurisdiction under Article 226 can be exercised in spite of availability of aforesaid remedy in exceptional circumstances, those cases has been explained by Supreme Court in the case of **Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Ors.**, reported in **(1998) 8 Supreme Court Cases 1**. Paragraph 15 reads as follows”

“15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bare in at least three contingencies, namely, where the Writ Petition has been filed for the enforcement of any of the Fundamental rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.”

We do not consider the present case within the exceptional circumstances as enumerated in the case of Whirlpool Corporation (supra). We dispose of the present writ application with a liberty to the petitioner to file Appeal, along with petition for condoning the delay in filing the Appeal within four weeks before the Excise Commissioner, Government of Bihar, Patna. If



any such Appeal is filed on behalf of the appellant then the learned Appellate Authority (Excise Commissioner) may consider to condone the delay, in view of the fact that the writ application was pending before this Court and dispose of the appeal within a further period of three months after giving opportunities to both sides in accordance with law.

It is made clear that we have not expressed any opinion on the merit of the case. The petitioner will be at liberty to raise his all contentions before the appellate authority.

Accordingly, with the liberty aforesaid, this writ application is disposed of.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

sanjeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.01.2020
Transmission Date	NA

