

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24629 of 2019

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Manisha Kumari W/o Bhairon Narayan, R/o Village- Tirojpur, P.O. and P.S.-
Durgawati, District-Kaimur at Bhabhua

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Excise, Bihar, Patna.
2. District Magistrate, Kaimur at Bhabhua.
3. Superintendent of Police, Kaimur at Bhabhua.
4. Station Head Officer of Durgawati Police Station, Kaimur at Bhabhua.

... .. Respondent/s

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Appearance :

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

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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 : 28-01-2020

Heard Mr Mritunjay Kumar, learned counsel for the
petitioner and Mr. Prashant Kumar, learned A.C. to S.C.-5 for the
respondents.

The present writ application has been filed for release of
Passion Pro motorcycle bearing Registration No.BR45H1728 in
favour of the petitioner, which was seized in connection with
Durgawati P.S. Case No.49 of 2019, registered of the offences
punishable under Sections 30(a) and 56(b) of the Bihar



Prohibition and Excise Act, 2016, as amended by the Amendment Act 8 of 2018 (hereinafter referred to as 'the Act').

The relief as prayed for in paragraph No.1 of the writ application reads as follows :-

"1. (i) For direction to the Station Head Officer of Durgawati Police Station, Kaimur at Bhabhua to release motorcycle bearing register no.BR45H1728 in favour of the petitioner as she is the owner thereof which is lying in open space without any proper safety.

(b) Further, any other order(s) may be passed, direction(s) given and relief(s) granted which the petitioner is entitled to in the facts and circumstances of the case."

The prosecution case as per the self statement of S.H.O., Duragapur is to the effect that on 23.02.2019 at about 7:45 P.M. during patrolling, two motorcycles were intercepted, out of which, one motorcycle, bearing Registration No.BR45H1728 was being driven by Bhairo Narayan and the other motorcycle, without having registration number was driven by Shubham Kumar and from the possession of pillion rider, namely Yogendra Narayan and Dharmendra Kumar, 750 ml of Indian Made Foreign Liquor were recovered from both the motorcycle, leading to registration of Durgawati P.S. Case No.49 of 2019.

It is submitted by learned counsel for the petitioner that the motorcycle was driven by husband of the petitioner and recovery has not been made from the motorcycle in question,



rather recovery has been made from possession of the pillion rider of which the husband of the petitioner had no knowledge. It is further submitted by learned counsel for the petitioner that the petitioner is the registered owner of the vehicle in question and the certificate of registration has been brought on record, as Annexure-2 to the writ application. It is further submitted that the vehicle in question is rotten under the open air.

Though statement has been made in paragraph No.8 of the writ application that confiscation proceeding has been initiated but learned counsel for the petitioner submits that by inadvertence, wrong statement has been made and hence prayer has been made for correction of the same.

Learned counsel for the petitioner is permitted to make necessary correction during the course of the day. Accordingly the order dated 13.12.2019 is modified to the extent that the confiscation proceeding has not been initiated till date.

Learned counsel for the respondent-State relying upon the counter affidavit filed on behalf of respondent Nos.3 and 4, Superintendent of Police, Kaimur at Bhabhua and the S.H.O., Durgawati P.S. respectively submits that the proposal for confiscation proceeding has been transmitted by the S.P., Kaimur at Bhaua vide Memo No.5163/Crime dated 01.10.2019 but the



confiscation proceeding has not been initiated as yet. Though statement with regard to initiation of confiscation proceeding has not been made in the counter affidavit. However, this Court vide order dated 13.12.2019 specifically directed to file counter affidavit after seeking clear instruction.

This is admitted position that 750 ml of illicit liquor was recovered from possession of the pillion rider and there is nothing on record to suggest that the driver and husband of the petitioner had the knowledge that the pillion rider was carrying 750 ml of illicit liquor coupled with the fact that the FIR was registered on 23.02.2019 and till date confiscation proceeding has not been initiated.

Though Section 58(1) of the Act mandates that anything liable for confiscation under the Act, is seized or detained, the officer seizing and detaining such property shall without any reasonable delay, submit a report to the District Collector who has jurisdiction over the said area, but in the present case, proposal has been transmitted by the S.P., Kaimur at Bhabua.

In the facts and circumstances of the present case, no useful purpose will be served in allowing the vehicle to rot under open sky leading to a complete waste of public money. Keeping the vehicle in such condition and allowing to reduce it into a junk,



would ultimately result into waste of public money has been deprecated by the Supreme Court in the case of **Sunderbhai Ambalal Desai Vs. State of Gujrat** and other analogous cases reported in **(2002) 10 SCC 283** and in the case of **General Insurance Council and Ors. Vs. State of Andhara Pradesh and Ors.** reported in **(2010) 6 Supreme Court Cases 768.**

Considering the fact that it is admitted position that the confiscation proceeding has not been initiated and learned counsel for the respondents has conceded for provisional release of the vehicle in question, we direct that the same be released provisionally till the conclusion of the trial or conclusion of confiscation proceeding to the satisfaction of District Magistrate-cum-Collector, Kaimur at Bhabhua 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 Special Court concerned or the confiscation authority, as the case may be;

(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 court or authority concerned.

(V) At the time of release of the vehicle in question, the concerned court or 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.

It is expected from the learned Special Judge to conclude the proceeding of release the vehicle in question 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 and observation is only for nature of accusation regarding release of the vehicle.

Accordingly, the writ application is disposed of with the aforesaid terms indicated above.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

sanjeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.02.2020
Transmission Date	NA

