

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23068 of 2019

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Ganga Kumar Son of Bachan Paswan @ Budhna Bhuiyan, Resident of Village - Rasalpur, P.S. - Warisaliganj, District - Nawada, presently residing at New Merin Bhuiyan Patti, Gopalichak, P.S. Kusunda, District - Dhanbad (Jharkhand).

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise Department, Bihar, Patna.
2. The District Magistrate, Nawada.
3. The Superintendent of Police, Nawada, District -Nawada.
4. The Officer Incharge, Kashichak Police Station, District-Nawada.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Devendra Prasad Singh
For the Respondent/s : Mr.Vikash Kumar (Sc11)

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

(The proceedings of the Court are being conducted through Video Conferencing and the Advocates joined the proceedings through Video Conferencing from their residence.)

Date : 07-07-2020

Heard learned counsel for the petitioner and learned
counsel for the State.

Petitioner has prayed for following relief:-

“The present writ application is for issuance of an appropriate direction to the respondent concern specially to respondent no.4 directing therein to release the vehicle bearing Honda Shine Motorcycle Regn. No. JH10AT-2173(Motorcycle) in favour of the petitioner.

And further an appropriate action be taken against the respondent no.3 for his wilfully non-compliance of order



dated 7.12.2018 of the learned court below i.e., the learned court below i.e., the learned A.D.J. II-cum-Special Judge, Nawada as passed in Kashichak P.S. Case No.140 of 2018 by which the respondent has been directed to hand over the vehicle bearing Regn. No. JH10AT-2173 which has been seized in Kashichak P.S. Case No.140/2018 under Sections 272, 273 of the Indian Penal Code and Section 30(a) of the Excise Act.”

Allegation is recovery of country made liquor from the possession of accused while they were riding on motorcycle and as such country made liquor as well as motorcycle was seized for committing offence under the Excise Act giving rise to Kashichak P.S. Case No.140/2018.

As there is recovery of illicit liquor from possession of accused and motorcycle was used for its transportation, as such, the vehicle is liable for confiscation under Section 56 of the Act and in view of Section 60 there is bar of jurisdiction in confiscation under the Act and no court has jurisdiction to make any order with regard to such property which are liable for confiscation except the Collector of the district as such, petitioner cannot derive any benefit from the order of release of vehicle passed by the Special Judge although the Special Court has observed that there is no confiscation report.

Counter affidavit has been filed in which it has been stated that proposal of Police Nawada dated 10.11.2018 has



been received for initiation of confiscation proceeding of vehicle and accordingly by order dated 12.1.2019, confiscation case No.9(M)/2019 has been initiated under Section 58 of the Excise Act against the owner of the vehicle and notices were issued to petitioner for his appearance .

It has been submitted on behalf of counsel for the State that final *ex parte* order has already been passed by the DM- cum- Confiscating Officer as in spite of notice, petitioner did not appear.

The writ petition is disposed of with liberty to petitioner to avail the statutory remedy of appeal against the order passed by the Confiscating Officer and if any, appeal is preferred by the petitioner, the delay in filing appeal may be condoned by the appellate authority as the matter remained pending before this Court and appeal be decided on merit. It is open for the petitioner to raise all grounds available to him under law.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sanjay/-

AFR/NAFR	
CAV DATE	
Uploading Date	31.07.2020
Transmission Date	

