

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24832 of 2019

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Shiv Kumari Devi Wife of Sikind Paswan Resident of Village- Rajanpura
Ward No.12, P.O.- Mailam, P.S.- Andharatharhi, District- Madhubani.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise Department, Government of Bihar, Patna.
2. The District Magistrate, Madhubani.
3. The Excise Superintendent, Madhubani.
4. The Superintendent of Police, Madhubani.
5. The District Transport Officer, Madhubani.
6. The Deputy Superintendent of Police, Jhanjharpur.
7. The Station House Officer, Bhairav Asthan, Police Station- Bhairav Asthan, District- Madhubani.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ramchandra Jha Raman
For the Respondent/s : Mr.Vivek Prasad (GP 7)

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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 : 06-01-2020

Heard Mr. Ram Chandra Jha Raman, learned counsel
for the petitioner and Ms. Rupa, AC to learned GP 7 for the
respondents.

The present writ application has been filed for release
of the Bajaj Pulsor Motorcycle bearing Registration no. BR
32Z 3765, seized in connection with Bhairav Asthan P.S. Case
No.30 of 2019, registered for the offences punishable under



Sections 272 and 273 of the Indian Penal Code and Section 30(a) of Bihar Prohibition and Excise Act, 2016, as amended by Amendment Act 8 of 2018 (hereinafter referred to as the Act).

The relief claimed by the petitioner in paragraph 1 of the writ petition reads as follows:

“That this writ application is being filed for release the motorcycle bearing Registration No. BR32Z3765, Chasis No. MD2A11CY1RC13316, Engine No. DHYRJC 86726 of the petitioner which has been seized in Bhairav Asthan P.S. Case No. 30/19 dated 17/3/19 for offence u/s 272,273 of the Indian Penal Code and u/s 30(A) of Bihar Prohibition and Excise Act 2018 which is pending in the court of learned District Magistrate Madhubani in Excise Confiscation Case No. 230/2019-20 and further for any other appropriate relief or relieves for which the petitioner is entitled in the facts and circumstances of the instant case.”

The factual matrix of the case is that the motorcycle in question was intercepted by the police and from the motorcycle, 6 litres country made liquor was seized.

It is submitted by learned counsel for the petitioner that the petitioner is the bonafide owner of the motorcycle in



question and the certificate of registration has been brought on record as Annexure 3 to the writ application. In fact, petitioner is the mother of FIR named accused Nitish Kumar Paswan. It is further submitted that the motorcycle in question is rotting in open area. However, the confiscation proceeding being Confiscation Case No. 230 of 2019-20 has been initiated and the same is pending before the Collector, Madhubani.

Learned counsel for the respondents, however, submits that since the confiscation proceeding has been initiated, the motorcycle in question may not be released but the Collector, Madhubani will dispose of the confiscation proceeding within a time frame.

Even if the vehicle is not liable for confiscation then the Special Judge under the Act in view of the bar under Section 60 of the Act does not have the jurisdiction to direct for the release of the vehicle. However, this Court is of the view that such bar will not operate in exercise of jurisdiction under Article 226 of the Constitution of India, since such power is required to be exercised in the given prevailing monstrous situation. Considering the view taken by the Apex Court in the case of State of Karnataka Vs. K. Krishnan



(2000) 7 Supreme Court Cases 80 and in the case of State of West Bengal and Ors. Vs. Sujit Kumar Rana, (2004) 4 Supreme Court Cases 129, a Full Bench of this Court in the case of Baleshwar Roy Vs. The State of Bihar and Ors , 2018(4) PLJR 970, held as follows:

“62. It may, however, be added that Article 226 of the Constitution of India provides power to the High Court to issue writs to any person or authority, including in appropriate cases, any Government, any order or writs (including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part-III and for any other purpose). Similarly Article 227 of the Constitution of India provides the power of superintendence over all Courts and Tribunals throughout the territories in relation to which any High Court exercises its jurisdiction. The powers of the High Court under Articles 226 and 227 of the Constitution of India cannot be curtailed under any circumstance, as the power flows from the Constitution itself. No statutory bar can affect the power of the High Court under Articles 226 and 227 of the Constitution of India.

63. Despite such wide and untrammelled powers, without any circumscription by external restrictions, the Courts have evolved



certain self-imposed limits while exercising these powers. The High Courts, normally, would not go beyond justified inhibitions under any Statute except where there is a complete jettisoning of rule of law or under exceptional circumstances which demand timely judicial interdict. This inhibition is basically ordained, keeping in mind that there is a national weal behind any valid piece of Legislation incorporating and inhering in itself the social objective behind any Legislation. Though, no limitations or fetters have been put on the powers of the High Court under Articles 226 and 227 of the Constitution of India, as the High Courts perform as sentinel on the qui-vive, but such power is not to be exercised casually and without coming to the conclusion that non-exercise of such power would lead to positive injustice. Times without number, it has been held by the High Courts that only under condition of a person establishing that substantial injustice has or is likely to ensue, such extraordinary powers can be exercised. It needs no adumbration by this date that the plenary powers of the High Court have only to be exercised in the interest of justice.

64. Thus, an order of release may be passed under Article 226/227 of the Constitution of India, even pending confiscation proceedings, but only when it is established before the Court that the procedure prescribed and the law in that



regard has been completely flouted and that there is complete violation of the procedure prescribed for confiscation, viz., notice to the offender before confiscation, allowing him opportunity of giving written representation and affording hearing on the issue to him and that such injustice cannot be remedied without the exercise of the extraordinary power.

65. Needless to state that under Article 226 of the Constitution of India, the Court will not go into the disputed question of facts.

66. Thus, the powers directing for release of the vehicles or goods, during the pendency of the confiscation, can only be sparingly exercised under monstrous situations and circumstances when injustice occurs because of non-fulfillment of the conditions for confiscation.”

Considering the fact that the confiscation proceeding has been initiated on 21.9.2019 when the case was registered on 17.3.2019 and more than nine months have elapsed but the same has not been concluded, it is expected from the Collector, Madhubani to conclude the confiscation proceeding being Confiscation Case No. 230 of 2019-20 if it has already not been concluded, within a period of six weeks from the date of receipt/production of a copy of this order after giving due opportunity of hearing to all affected persons.



This writ application is, accordingly, disposed of.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

anil/-

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CAV DATE	
Uploading Date	
Transmission Date	

