

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.25158 of 2019

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Urmila Devi (Female) , aged about 65 years, Wife of Vishvnath Kushwaha,
Resident of Village Bulahawa, Pathahawa P.S. Hanumanganj, District
Kushinagar (U.P.).

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Excise,
Government of Bihar, Patna.
2. The Principal Secretary, Department of Excise, Government of Bihar, Patna.
3. The District Magistrate, Bettiah, West Champaran.
4. The Superintendent of Police, Bagaha, West Champaran.
5. The District Transport Officer, Bettiah, West Champaran.
6. The Officer-in-Charge, Piparasi Police Station, District - West Champaran

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ashok Kumar Gupta

For the Respondent/s : Mr.Vivek Prasad (GP7)

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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 : 05-02-2020

Heard Mr. Ashok Kumar Gupta, learned counsel for the
petitioner and Mr. Vivek Prasad, learned GP 7.

The present writ application has been filed for release of
Piaggio three wheeler auto rickshaw vehicle of the petitioner
bearing registration no. UP-57T-2344 , which has been seized in
connection with Piparasi P.S. Case No. 49 of 2019 registered for
the offences punishable under Sections 30(a) and 37(b) of the



Bihar Prohibition and Excise (Amendment) Act, 2018 [hereinafter referred to as 'the Act'].

The relief prayed for has been stipulated in paragraph – 1 of the writ petition which reads as follows:-

“1. That this writ petition is being filed for issuance of a direction to the respondent no. 3 the District Magistrate, West Champaran to release the vehicle (Piaggio Three Wheeler Auto Rickshaw Passenger) bearing Registration No. UP-57T-2344, Engine No. W1B3200790, Chassis No. MBX0000ZFMB220693 which has been seized in connection with Piparasi P.S. Case No. 49 of 2019 dated 03.09.2019 under Sections 30(a), 37(b) of the Bihar Prohibition and Excise Act, 2018 under the Excise Act and no confiscation proceeding has been pending before the Collector, Bettiah, West Champaran.”

The prosecution case as per the written report of Umesh Prasad Yadav, Assistant Sub-Inspector of Police submitted to the S.H.O., Piparasi P.S. is to the effect that on 03.09.2019 at 5.50 P.M., the auto rickshaw in question was intercepted in which two persons were found sitting namely Suresh Chauhan being the passenger and Ramprit Kushwaha being the driver of the said



vehicle. The passenger Suresh Chauhan was in a intoxicated condition whereas from the auto rickshaw, 10 sachets of 200 ml each of country made liquor totaling 02 liters was recovered and consequently Piparasi P.S. Case No. 49 of 2019 was registered on 03.09.2019.

It is submitted by learned counsel for the petitioner that the petitioner is the owner of the vehicle in question. The certificate of registration of the vehicle in question has been brought on record, as Annexure -1 to the petition. He further submits that the vehicle is rotting under the open sky and keeping the vehicle in such condition and allowing it to reduce into a junk would ultimately result into waste of public money and petitioner is ready to produce the vehicle in question as and when required by the court below or the confiscation authority.

Mr. Vivek Prasad, learned GP – 7 appearing for the respondents relying upon the counter affidavit filed on behalf of the respondent no. 3 i.e. District Magistrate, Bettiah, West Champaran filed on 05.02.2020 submits that the report under Section 58(1) of the Act was transmitted by the S.P., Bagaha to the District Magistrate, West Champaran, Bettiah vide letter no. 1241 dated 22.10.2019 on the basis of the recommendation made by Bhimsen Prasad Yadav, Sub Inspector of Police i.e. the I.O. of the



case and consequently Confiscation Case No. C.R.M. 504 of 2019-20 has been initiated vide order dated 19.12.2019 and notices have been issued to the petitioner hence the vehicle has been confiscated.

Having considered the rival submissions of the parties, *prima facie* it appears that the seizure was made by Umesh Prasad Yadav, A.S.I. of Police, though Section 73(1)(e) of the Act clearly mandates the seizure to be made by a Police Officer not below the rank of Sub Inspector whereas, Section 58(1) of the Act mandates for transmission of the report with regard to articles liable for confiscation by the seizing or detaining authority but in the present case, report has been transmitted by S.P., Bagaha, however, we do not find from the order of the learned Collector dated 19.12.2019 that all these lapses have been considered by the Collector. It is settled law that in the cases Excise Act, being a stringent Act, the procedural safeguards have to be followed very meticulously. If the seizure is itself bad in law, then it vitiates the entire subsequent action. However in view of the ratio laid down by a Full Bench of this Court in the case of Baleshwar Roy and Ors. Vs. The State of Bihar and Ors. reported in 2018 (4) PLJR 970 wherein it has been held that on initiation of confiscation proceeding, the Court cannot interfere and exercise jurisdiction under Article 226 of the



Constitution of India save and except in monstrous situations and circumstances when injustice occurs because of non-fulfillment of the conditions for confiscation. Paragraph nos. 62 to 66 of the said judgment read 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 sealing, detention or seizure is the *sine qua non* for valid initiation of confiscation proceeding as incorporated under Section 62, 56, 62 and 58(1) of the Act, we are not inclined to interfere at this stage. However, it is expected from the learned Collector, West Champaran, Bettiah to consider all these lapses while proceeding further into the matter and to conclude the confiscation proceedings preferably within a period of six weeks from the date of the receipt / production of a copy of this order. It is expected from the petitioner to regularly appear in the confiscation proceeding.

The writ petition is disposed of.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

praful/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14-02-2020
Transmission Date	NA

