

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.25013 of 2019

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Ghurghur Yadav, Son of Govari Yadav, Resident of Village Bariarwa P.S.
Chautarwa, District West Champaran.

... .. 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, Chautarwa 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.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 : 24-01-2020

Heard Mr. Ashok Kumar Gupta, 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 respondent authorities to release Hero HF
Deluxe Motorcycle of the petitioner bearing Registration No. BR-
22AD-5059, which has been seized in connection with Chaurtarwa
P.S. Case No.228 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 as claimed by the petitioner in paragraph No.1 of the writ application 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 (Hero HF Deluxe Motorcycle) bearing Registration No.BR-22AD-5059, Engine No.HA11ENJHB12593, Chasis No.MBLHAR234JHB11992 which has been seized in connection with Chaurtarwa P.S. Case No.228 of 2019 dated 01.09.2019 under Section 30(a) of the Bihar Prohibition and Excise Act, 2016 under the Excise Act and no confiscation proceeding has been pending before the Collector, Bettiah, West Champaran.”

The prosecution case got initiated on the basis of the written report submitted by Sub Inspector of police submitted before the S.H.O. Chaurtarwa P.S. is to the effect that on 01.09.2019, at about 4:10 P.M. during patrolling, a secret information was received that from a motorcycle illicit liquor is being transported, whereupon the vehicle in question was intercepted and five litres of countrymade liquor were recovered and the vehicle was seized, leading to registration of Chaurtarwa P.S. Case No. 228 of 2019.

It is submitted by learned counsel for the petitioner that the petitioner is the registered owner of the vehicle in question.

Counter affidavit has been filed on behalf of respondent No.3, District Magistrate, Bettiah which suggests that confiscation proceeding has been initiated and final order has been passed by



District Magistrate, Bettiah vide order dated 17.01.2020 passed in C.R.M. No.429 of 2019-20 whereby the motorcycle in question has been confiscated and the Superintendent, Excise, West Champaran Bettiah has been directed to get the physical verification of motorcycle in question done.

Learned counsel for the State submits that now the final order in confiscation proceeding has been passed, 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 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 find 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	
CAV DATE	
Uploading Date	28.01.2020
Transmission Date	

