

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.59 of 2020

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Viltu Singh @ Biltu Singh S/o Ramnandan Singh R/o Village-Ratwara
Bishunpur, P.S.-Bajpatti, District-Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise Department,
Government of Bihar, Patna.
2. The Collector Cum District Magistrate-Sitamarhi, District-Sitamarhi
3. The Senior Superintendent of Police, Sitamarhi.
4. The S.H.O., Bajpatti Police Station, District-Sitamarhi.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Dinesh Jha
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 : 03-02-2020

Heard Mr. Dinesh Jha, learned counsel for the petitioner
and Mr. Prashant Kumar, learned A.C. to S.C.-5 appearing on
behalf of the respondents.

The present writ application has been filed for release of
Bajaj Discover 125 motorcycle bearing Registration No.BR-30N-
0985, in favour of the petitioner, which has been seized in
connection with Bajpatti P.S. Case No. 257 of 2019 registered for
the offences punishable under Section 30(a) 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 issuance of an appropriate writ/writs/order/orders/ direction/direction to release the Bajaj Discover 125 Motorcycle, Reg. No.BR-30N-0985, Engine No.-JZZRGE14949 and Chasis No.MD2A15BZ3GRE98823 which has been seized in connection with Bajpatti P.S. Case No.257/2019 dated 01.08.2019 (State vs. Ajay Kumar and Ans) u/s Sec.30(A) Bihar Prohibition and Excise Act, 2016 hence forth taking into consideration that nothing incriminating article has been recovered from conscious possession of the petitioner.

(II) To issue an appropriate order/s, direction/s including a writ preferably in the nature of Mandamus commanding and directing upon the respondent District Magistrate to release the vehicle hence forth taking into consideration that nothing incriminating article has been recovered from the vehicle.

(III) To any other relief/s to which the petitioner is entitled in the facts circumstances of the case.”

The prosecution case got initiated on the basis of the written report submitted by Md. Izaz, S.I. of police submitted before S.H.O. Bajpatti P.S. is to the effect that on 01.08.2019 at 5:00 P.M. during patrolling, a secret information was received that liquor is being sold illegally by carrying on a motorcycle, consequently, a raid was laid and from the possession of one Ajay Kumar and from the motorcycle in question, total 720 ml Indian Made Foreign Liquor were recovered, leading to registration of Bajpatti P.S. Case No.257 of 2019.



It is submitted by learned counsel for the petitioner that the petitioner is the registered owner of the vehicle in question and certificate of registration has been brought on record as Annexure-2 to the writ application. It is further submitted that the petitioner is not named in the F.I.R. and he had no knowledge about the liquor being transported through the motorcycle in question and the vehicle in question is rotting in the open sky. It is further submitted that confiscation proceeding has been initiated but it has not been concluded till date

Mr. Prashant Kumar, learned counsel for the respondent-State relying upon counter affidavit filed on behalf of the respondent No.2, District Magistrate, Sitamarhi submits that the proposal / report under Section 58(1) of the Act for initiating the confiscation proceeding has been transmitted vide Memo No.542 dated 18.09.2019 by Superintendent of Police, Sitamarhi and consequently, Confiscation Proceeding being Confiscation Case No.17 of 2020 has been initiated and vide order dated 14.01.2020, next date of hearing was fixed for 28.01.2020.

Having heard learned counsel for the parties, it appears that F.I.R. was registered on 01.08.2019, writ application was filed on 04.01.2020 and on the prayer of learned counsel for the State, vide order dated 13.01.2020, the matter was adjourned for 27th



January, 2020, in order to enable him to seek instructions and file counter affidavit and thereafter, the confiscation proceeding has been initiated by the respondent authorities, which suggests the callous manner in which the quasi judicial proceeding is being conducted.

Considering the fact that once the confiscation proceeding is initiated, the exercise of discretionary jurisdiction under Article 226 of the Constitution of India, having self imposed restriction can be exercised in exceptional or a monstrous situation, such as when fundamental rights have been violated, the impugned order or the proceedings are wholly without jurisdiction or where the principle of natural justice has been grossly violated or vires of the Act is under challenge which has also been depicted 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** and by a Full Bench of this Court in the case of **Baleshwar Roy Vs. The State of Bihar and Ors , 2018(4) PLJR 970.**

In view of the discussions made above, we are not inclined to pass order for release of the vehicle for the present. However, it is expected from District Magistrate, Sitamarhi to



conclude the proceeding of Confiscation Case No.17 of 2020, within a period of six weeks of receipt or production of the order in accordance with law.

The petitioner is also expected to appear regularly and participate in the confiscation proceeding.

Accordingly, with the above observation and direction, the present writ application is disposed of.

The office is directed to communicate this order to the District Magistrate, Sitamarhi for its strict compliance.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

sanjeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.03.2020
Transmission Date	NA

