

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24807 of 2019

Meera Devi, Age - 40 years, Female, W/o -Late Shiv Kumar Das, R/O -
Khuskibag, P.S.-Purnia Sadar, Distt-Purnia.

... .. Petitioner/s

Versus

1. State of Bihar, through Principal Secretary, Excise Deptt., Patna, Bihar.
2. The District Magistrate, Katihar.
3. The Superintendent of Police, Katihar.
4. The S.H.O. Kadwa (Balua Belon) Police Station, Katihar.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Sanjeev Kumar Singh
For the Respondent/s : Mr.Kumar Pankaj AC to SC5

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

and

HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

Date : 24-02-2020

Head Mr. Sanjeev Kumar Singh, learned counsel for the
petitioner and Mr. Kumar Pankaj, learned AC to SC 5.

The present writ application has been filed for release of
auto rickshaw (Tempo) bearing Registration no. BR-11PA-1108,
which has been seized in connection with Kadwa (Balua Belon)
P.S. Case No. 328 of 2018, registered for the offence 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 prayer as stipulated in paragraph no. 1 of the writ
petition, reads as follows:-



“That this is an application for issuance of an appropriate writ for the order or direction, directing the respondents to release the vehicle (Tempo) vide Reg. No. BR-11PA-1108 in favour of the petitioner which has been seized in connection with Kadwa (Balial Belon) P.S. Case No. 328 of 2018, dated 19.09.2018, u/s-30(a) of Bihar Prohibition and Excise Act in which the confiscation proceeding is not initiated by the learned Court of District Magistrate, Katihar.

And for any other relief for which the petitioner is found to be entitled in the facts and circumstances of the case.”

The prosecution case as per the self statement of Sub Inspector of Police Dinesh Kumar recorded on 19.09.2018 at 1.30 P.M. at Minapur Footani Chowk is to the effect that on 19.09.2018 at 1.00 P.M. during the course of vehicle checking, the auto rickshaw in question was intercepted and altogether 109.80 liters of Indian Made Foreign Liquor was recovered leading to registration of Kadwa (Balial Belon) P.S. Case No. 328 of 2018.

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 -2 to the petition. The vehicle is rotting in open sky and keeping the vehicle in such condition and allowing



it to reduce into junk would ultimately result into wastage of public money which has been deprecated by the Hon'ble Supreme Court in the case of Sunderbhai Ambalal Desai Vs. State of Gujrat and other analogous cases reported in (2002) 10 SCC 283 and in the case of General Insurance Council and Ors. Vs. State of Andhara Pradesh and Ors. reported in (2010) 6 Supreme Court Cases 768 and petitioner is ready to produce the vehicle in question as and when required by the court below, after its release and will not change the shape or transfer the vehicle in question creating any kind of adverse interest against the interest of the State during the pendency of the confiscation proceeding.

However, the counter affidavit filed on behalf of respondent -District Magistrate, Katihar suggests that confiscation proceeding has been initiated being Confiscation Case No. 288 of 2019-20 and notice has been issued to the petitioner on 16.09.2019.

Considering the fact that confiscation proceeding has already been initiated in the month of September 2019 itself, the writ application was filed on 10th December, 2019 and in view of the ratio laid down by the 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 this Court cannot interfere and exercise jurisdiction under Article 226 of the Constitution of India, except in monstrous situations and circumstances when injustice occurs because of non-fulfillment of the conditions for confiscation , paragraph nos. 62 to 66 of which reads 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.”

In view of the above mentioned position of law, this Court is not inclined to interfere at this stage.

However, it is expected from the respondent no. 2 i.e. District Magistrate, Katihar to conclude the confiscation proceeding within a period of six weeks from the date of receipt / production of a copy of this order.

The counter affidavit filed on behalf of the District Magistrate, Katihar suggests that it is actually the statement of facts, which she has signed as counter affidavit. It is required to be conveyed that if there is no competent person who can prepare the counter affidavit in the required format, then in that case it would be proper to get it prepared by a competent person in the High Court. From the perusal of counter affidavit it appears that District



Magistrate, Katihar has signed only on the statement of facts and it is not in the proper format of counter affidavit.

Let a copy of this order be communicated to District Magistrate, Katihar.

The writ petition stands disposed of.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

praful/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17-03 -2020
Transmission Date	NA

