

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24841 of 2019

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Sunil Lohar @ Sunil Sharma, S/O- Ganesh Sharma Lohar @ Ganesh Sharma
R/O- Jagarnath, P.S.- Hasanganj, Distt- Katihar.

... .. Petitioner/s

Versus

1. The 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. Hasanganj Police Station, Katihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Sanjeev Kumar Singh
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 : 07-01-2020

Learned counsel for the petitioner is permitted to
make necessary correction in the petition.

Heard Mr. Sanjeev Kumar Singh, learned counsel
for the petitioner and Mr. Vivek Prasad, learned G.P.-7 for the
respondent -State.

The present writ application has been filed for
release of Hero Splendor Motorcycle of the petitioner bearing



Registration number BR 39Z 7210, seized in connection with Hasanganj P.S. Case No. 59 of 2019, registered under Section 37(c) of Bihar Prohibition and Excise (Amendment) Act, 2016, as amended by Amendment Act 8 of 2018 (hereinafter referred to as 'the Act'). The relief(s), as stipulated in paragraph no.1 of the petition, read(s) 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 (Motorcycle) vide Reg. No. BR 39Z-7210 in favor of the petitioner which has been seized in connection with Hasanganj P.S. Case No. 59 of 2019, dated 16.308.2019, u/s- 37(c) of Bihar Prohibition and Excise Act in which the confiscation proceeding is not initiated by the learned Court of the District Magistrate, Katihar.”

The factual matrix of the case is that two persons riding the vehicle in question, were intercepted, but one of them managed to escape from the scene but the second person was apprehended and he was found in intoxicated condition, leading to registration of FIR, being Hasanganj P.S. Case No. 59 of 2019.

It is submitted by learned counsel for the petitioner that the petitioner is the registered owner of the vehicle in question and the certificate of registration of the vehicle in question has been brought on record as Annexure-2. This is an



admitted position that no recovery of liquor or intoxicant was made from the vehicle in question. The seized vehicle is rotting under the open sky. It is further submitted that since there is no recovery and the vehicle has not been used for carrying liquor or intoxicant, hence it is not liable for confiscation under the provisions of Section 56 of the Act. It is further submitted that no confiscation proceeding has been initiated till date, statement to that effect has been made in paragraph no.1 of the petition.

Learned GP 7 submits that this is an admitted position that neither any intoxicant nor liquor has been seized from the vehicle in question nor the same has been used for carrying any such prohibited article. Hence, prima facie, it is not liable for confiscation. Hence, learned counsel for the respondents has no objection with regard to the provisional release of the vehicle in question.

However, learned counsel for the respondent does not have any instruction with regard to the initiation of confiscation proceeding. Even if the authority choose to initiate such proceeding then they have to comply the mandatory direction given in the case of Diwakar Kumar Singh Vs. The State of Bihar and Ors., 2018 (3) PLJR 403, wherein it has been held that it shall be be mandatory for the confiscating authority,



before passing final order in confiscation proceeding when the person is found in drunken condition but neither liquor is seized nor the vehicle has been used for transportation of the liquor, to decide it as a preliminary issue whether in such a condition, the vehicle would be liable for confiscation under Section 56 of the Act. A copy of the said order was to be communicated to all the District Magistrates of the State through the office of the Advocate General.

Having heard learned counsels for the parties, we are of the opinion that Section 56 of the Act provides the conditions in which anything can be liable for confiscation. Section 56 of the Act reads as follows:-

“56. Things liable for confiscation.-

Whenever an offence has been committed, which is punishable under this Act, following things shall be liable to confiscation, namely-

(a) any intoxicant, liquor, material, still, utensil, implement, apparatus in respect of or by means of which such offence has been committed;

(b) any intoxicant or liquor unlawfully imported, transported, manufactured, sold or brought along with or in addition to, any intoxicant, liable to confiscation under clause(a);

(c) any receptacle, package, or covering in which anything liable to confiscation under clause (a) or clause(b), is found, and the other contents, if any, of such receptacle, package or covering;



(d) any animal, vehicle, vessel or other conveyance used for carrying the same.

(e) any premises or part thereof that may have been used for storing or manufacturing any liquor or intoxicant or for committing any other offence under this Act.”

Section 56(d) of the Act is relevant, which suggests that any animal, vehicle, vessel or other conveyance used for carrying the intoxicant is liable for confiscation.

This is an admitted fact that there was no recovery of liquor or intoxicant from the vehicle in question. This is also not a case that the liquor was being carried through the vehicle in question. This is an admitted position that the confiscation proceeding has not been initiated. In the circumstances, prima facie, it appears that under Section 56 of the Act, the seized vehicle is not liable for confiscation, as it has not been used for carrying liquor.

Since there is a bar under Section 60 of the Act for any court to pass any order with regard to the seized vehicle, the Special Judge has no jurisdiction to release the vehicle. However, this bar under Section 60 of the Act will not apply in exercise of the jurisdiction under Article 226 of the Constitution of India, in view of the considered opinion of this Court, the present case comes within one of the exceptions where the



discretionary jurisdiction under Article 226 of the Constitution of India can be exercised for releasing the vehicle seized, as has been held 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 bar 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.”

In the facts and circumstances of the present case, no useful purpose will be served in allowing the vehicle to rot under open sky leading to a complete waste of public money. Keeping the vehicle in such condition and allowing the vehicle



to reduce into a junk which will be ultimately resulting into waste of public money, such tendency has been deprecated by the Supreme Court in the case of Sunderbhai Ambalal Desai Vs. State of Gujrat and other analogous cases (2002) 10 SCC 283 and in the case of General Insurance Council and Ors. Vs. State of Andhara Pradesh and Ors. (2010) 6 Supreme Court Cases 768.

Moreover, learned counsel for the respondents has no objection to the provisional release of the vehicle, hence we direct that the same be released provisionally till the conclusion of the trial on the following conditions to the satisfaction of learned A.D.J.-cum-Special Judge, (Excise), Katihar:

(I) The petitioner will produce the proof of valid certificate of registration/ownership in his favour including the insurance papers of the vehicle in question before the A.D.J.-cum-Special Judge, Excise, Katihar;

(II) The petitioner will furnish bank guarantee of rupees fifty thousand, with two sureties of the like amount to the satisfaction of the Special Court concerned or the confiscation authority, as the case may be;

(III) The petitioner shall give an undertaking on affidavit that he will not deal with the vehicle in question or



alienate or encumber the same creating any kind of adverse interest against the interest of the State during the pendency of the confiscation proceeding;

(IV) The petitioner will not use the vehicle for any illegal purpose and as and when required, he will produce the vehicle in question before the court or authority concerned.

(V) At the time of release of the vehicle in question, the concerned court or authority shall get prepared photo copy of the vehicle in question duly certified in presence of the petitioner;

(VI) Panchnama of the vehicle in question shall also be prepared and will be kept on record which may be used as secondary evidence and the petitioner will furnish an affidavit incorporating therein an undertaking not to challenge the said photo copy or panchnama so prepared in his presence at the time of release of the vehicle in question for use in course of the trial or confiscation proceeding as the case may be.

The entire exercise will be done by the Special Judge within ten days of receipt/production of a copy of this order.

It is made clear that we have not expressed any opinion with regard to the merits of this case or with regard to



the ownership of the vehicle in question.

Accordingly, the writ application is allowed to the extent as indicated above.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

Amrendra/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

