

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.249 of 2020

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Sunil Kumar, Son of Ram Pravesh Rai, Resident of Village- Rahar Diyara,
P.S.- Sonpur, District- Saran at Chapra.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
2. The District Magistrate-cum-Collector, Saran at Chapra.
3. The Assistant Excise Commissioner, Saran at Chapra.
4. The Superintendent of Excise, Saran at Chapra.
5. The Superintendent of Police, Saran at Chapra.
6. The Vehicle Inspector, Saran at Chapra.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Devendra Narayan Singh
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 : 05-02-2020

Heard Mr. Devendra Narayan Singh, learned counsel
for the petitioner and Mr. Kumar Manish, learned S.C.-5 appearing
for the respondents.

The present writ application has been preferred for
release of TVS Jupiter two wheeler (Scooty) of the petitioner
bearing Registration No. BR-04AA-9539, which has been seized
in connection with Manjhi P.S. Case No. 141 of 2019, registered
for the offences punishable under Sections 30, 30(g) and 38(i)(ii)
of the Bihar Prohibition and Excise Act, 2016, as amended by
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 release of TVS Jupiter two wheeler (Scooty) vehicle bearing its Registration Number as BR-04AA-9539, Chasis No.MD626EG40JIL09163 and Engine No.DO4LJISC9415 of the petitioner which has been seized in connection with Manjhi P.S. Case No.141 of 2019 registered for the offences punishable under Sections 30, 30(g), 38(i)(ii) of the Bihar Prohibition and Excise Act, 2016.

(ii) Also for restraining the respondent authorities from completion of confiscation proceeding against petitioner's TVS Jupiter two wheeler (Scooty) vehicle its bearing its Registration Number as BR-04AA-9539, seized in connection with Manjhi P.S. Case No.141 of 2019.

(ii) Also for any other relief/ reliefs for which the petitioner is found entitled in the eye of law.”

The prosecution case got initiated on the basis of the written report submitted by Mr. Suman Kumar, A.S.I. of Police, submitted before the S.H.O., Manjhi P.S. is to the effect that on 23.05.2019, at 5:00 P.M. during vehicle check, the Scooty in question was intercepted and 50.400 litres of Indian Made Foreign Liquor were recovered and the Scooty was seized, leading to registration of Manjhi P.S. Case No. 141 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 of the writ application. It is further submitted that the vehicle in question is rotting under open sky. It is further submitted that the petitioner is ready to produce Scooty as and when directed by the



Court below and further submits that he shall not transfer the Scooty during pendency of the confiscation case.

Though the petitioner preferred an application before the learned Court below which has been rejected vide order dated 18.10.2019 passed by learned Additional Sessions Judge-cum-Special Judge (Excise Cases) Saran at Chapra. The vehicle in question has been seized by person who is not authorized to conduct search, seizure or arrest as per Section 73(e) of the Act, which stipulates that the seizure cannot be made by an officer below the rank of Sub Inspector of Police, whereas the informant in the present case, who has also conducted the search, is Assistant Sub Inspector of Police. Hence, the very seizure appears to be dehors the provisions of the Act.

A counter affidavit has been filed on behalf of respondent No.2, the District Magistrate-cum-Collector, Saran at Chapra which reflects that the proposal, transmitted by S.P. Saran at Chapra vide letter No.1798 dated 28.10.2019 for confiscation and destruction of the seized liquor in Confiscation Case No.1040 of 2019 which has been initiated by the District Magistrate, Saran at Chapra and vide order dated 08.11.2019 seized liquor was directed to be destroyed. However, the confiscation with regard to the vehicle in question has not been initiated as yet.



Learned counsel for the respondent State relying upon the counter affidavit filed on behalf of Respondent no. 2, District Magistrate, Saran, S.P., Saran at Chapra vide report dated 28.10.2019 recommended for confiscation and destruction of liquor, however, from the order dated 08.11.2019 passed by District Magistrate in Confiscation Case No.1040 of 2019, it appears that the Collector after confiscation directed for destruction of seized liquor and further decided to issue notice, to concerned person. Since the vehicle in question is liable to be confiscated under Section 56 of the Act. However the said order does not suggest that any report under Section 58(1) of the Act has been transmitted by detaining or seizing authority for confiscation of the vehicle or any notice has already been issued to the petitioner.

Having heard learned counsel for the parties and from perusal of the entire materials on record, it appears that neither the investigating agency nor the Collector have bothered to go through and appreciate the provisions of the Act. The FIR has been registered on 23.05.2019 under Section 38(1)(2) of the Bihar Prohibition and Excise Act, 2016, as amended by Amendment Act 8 of 2018. Section 38 of 2016 Act, prior to the amendment prescribed penalty for possessing intoxicant but the same has been



deleted with effect from 30.07.2018. Similarly, the case has been registered under Section 30(g) of the Act also but Section 30(g) has also been substituted by Act No.8 of 2018 with effect from 30.07.2018 and as such Section 30(g) does not exist in the present Act.

The seizure has also been made by Assistant Sub Inspector of Police which he was not authorized to do so, as Section 73(1)(e) mandates the seizure cannot be made by a police officer below the rank of Sub Inspector of Police. Hence, the very seizure appears to be de hors the provisions of the Act.

From reading of Sections 56, 58 and 62 of the Act, it is manifest that the sine qua non for initiation of confiscation proceeding is seizure, sealing and detention. The lodging of the FIR and commencement of prosecution is not mandatory for initiation of confiscation proceeding. Though the terms 'sealing' or 'detention' has not been defined under the Act but when the very seizure is not in accordance with the provisions of the Act then in that circumstance, the further proceeding in the matter stands vitiated. From the counter affidavit filed on behalf of the District Magistrate, it reflects that confiscation proceeding has been initiated vide Confiscation Case No.1040 of 2019 wherein the order dated 08.11.2019 suggest that a report under Section



58(1) of the Act was transmitted by the Superintendent of Police, Saran at Chapra vide letter No.1798 dated 28.10.2019 but he only recommended for confiscation and destruction of the seized liquor as gets reflected from the part of the order of the Collector which reads as :-

..... “पुलिस अधीक्षक सारण छपरा द्वारा जप्त देशी विदेशी शराब को बिहार मद्यनिषेध और उत्पाद अधिनियम 2016 के अंतर्गत अधिहरण / विनिष्ठीकरण करने हेतु प्रस्ताव प्रेषित किया गया है।”

However, in the subsequent part of the order, the Collector has said that in confiscation case, the notice has been issued to the affected person but no notice has been issued to the petitioner. Though the actual proposal of the S.P. under Section 58(1) of the Act has not been brought on record but it appears from the order that no proposal for confiscating the vehicle in question has been transmitted by detaining or seizing authority till date. Hence it cannot be presumed that confiscation proceeding has been initiated against the vehicle in question.

Section 58 (1) of the Act mandates that anything which is liable for confiscation under the Act, is seized or detained, the officer seizing and detaining such property shall without any reasonable delay submit a report to the District Collector who has jurisdiction over the said area. But in the present case, the report for confiscation of the vehicle has been transmitted by the



Superintendent of Police, which is also contrary to the law. Moreover, the Collector has not considered all these facts and mechanically the confiscation proceeding has been initiated which suggests the callous manner in which the quasi judicial function is being discharged.

In the facts and circumstances of the present case, no useful purpose will be served in allowing the vehicle to rot under the open sky leading to a complete waste of public money. Keeping the vehicle in such condition and allowing to reduce it into a junk, would ultimately result into waste of public money has been deprecated by the 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**.

In view of the discussions made above, neither the seizure has been done properly nor the confiscation proceeding has been initiated for release of the vehicle in question, we direct that the Scooty bearing registration no. BR-04AA-9539 be released provisionally till the conclusion of the trial or till the conclusion of confiscation proceeding, if any, to the satisfaction of learned Additional District and Sessions Judge-cum-Special Judge



(Excise) or Collector, Saran at Chapra on the following conditions

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(I) The petitioner will produce the proof of valid certificate of registration/ownership in his favour including the insurance papers;

(II) The petitioner will furnish surety bond of Rs. 50,000/- but not in the form of bank guarantee or cash, with two sureties of the like amount to the satisfaction of the A.D.J.-cum-Special Judge, Excise, Saran at Chapra 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.

It is expected from the Confiscation Authority that the entire exercise of release will be concluded 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 accusation or with regard to the ownership of the vehicle in question.

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

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

sanjeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.03.2020
Transmission Date	NA

