

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24556 of 2019

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Devendra Kumar Singh, S/o Ram Paras Singh, R/o Village- Ganauli, P.S. Masrakh, District- Saran (Chapra).

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Commissioner, Excise, Saran Division, Saran at Chapra.
3. The District Magistrate, Saran (Chapra).
4. The Superintendent of Police, Saran (Chapra).

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Gajendra Kumar Singh
For the Respondent/s : Mr. Madan Mohan, AC to SC 5

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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 : 21-01-2020

Heard Mr. Gajendra Kumar Singh, learned counsel for the petitioner and Mr. Madan Mohan, learned A.C. to SC 5 for the respondents.

The present writ application has been filed for release of Scorpio vehicle, bearing Registration No. BR29PA-3790, seized in connection with Dariyapur P.S. Case No. 438 of 2019, registered for the offences punishable under Sections 30(a)/37 (b) (c) of the Bihar Prohibition and Excise Act, 2016, as amended by Amendment Act 8 of 2018 (hereinafter referred to as 'the Act').



The prosecution case got initiated as per the written report of Upendra Kumar Yadav, Assistant Sub Inspector of Police, Dariyapur P.S., submitted to the S.H.O., Dariyapur Police Station, to the effect that on 06.11.2019, at 9:20 PM, during patrolling duty, the said vehicle in question was intercepted and Arbind Kumar Tiwary, Subhash Kumar Kushwaha, Satyendra Kumar Tiwary and Devendra Singh were travelling in the said vehicle. They were in intoxicated condition and all of them were put to breath analyzer test, which was found to be positive. From the vehicle in question, one litre of Indian Made Foreign Liquor was recovered on search, leading to the registration of Dariyapur Police Station Case No. 438 of 2019.

It is submitted on behalf of the petitioner that the vehicle, in question, has been kept in open space in the Dariyapur Police Station campus and is rotting. It is also submitted that the petitioner is the registered owner of the vehicle in question and certificate of registration has been brought on record as Annexures-2 and 3 to the writ petition. It appears from the contents of the counter affidavit that a malicious confiscation proceeding has been initiated after filing of the writ application.

It is submitted by learned Counsel for the respondents-State, relying upon the counter affidavit filed on behalf of the



respondent no. 3, the District Magistrate, Saran, duly sworn by Sri Sanjeev Kumar Thakur, Superintendent of Excise, Saran, that on the proposal/report of the Superintendent of Police, Saran, dated 13.12.2019, the Collector, Saran, has initiated proceedings for confiscation of the vehicle in question, under Section 58 of the Act, being Confiscation Case No. 02/2020 and in the said case, pursuant to the notices issued to the petitioner, the petitioner has appeared and filed his reply to the show cause, and the next date fixed in the case is 20.01.2020. The seized liquor has also been directed to be destroyed. It is, thus, submitted by learned Counsel for the respondents that till conclusion of the confiscation proceedings, the vehicle, in question, may not be released in favour of the petitioner. Paragraph 7 of the counter affidavit reads as follows:

“7. That it is relevant to mention here that for confiscation of the seized Scorpio in question, proposal was sent by the Superintendent of Police, Saran, via his letter No. 280/Ex. Pro. Dated 13.12.2019 and accordingly Confiscation Case No. 02/2020 was initiated by the answering respondent and vide the order, dated 04.01.2020 contained in Memo No. 07/Nayay dated 04.01.2020 order was given to destroy the seized foreign liquor and next date was fixed on 20.01.2020 for hearing. Apart from this, it is also relevant to mention here that notice was



also issued to the interested person as to why not vehicle in question be confiscated. Accordingly, the owner of the seized vehicle filed his reply on 13.01.2020 and on the fixed date i.e. 20.01.2020 after hearing appropriate order will be passed in accordance with the law for the time being in force.”

From perusal of the materials available on the record, it is evident that First Information Report has been instituted on 06.11.2019, the present writ application was registered on 06.12.2019 and the matter was heard on 12.12.2019, and on the request of the learned Counsel for the State, the matter was adjourned for 21.01.2020, and only thereafter the proposal/report for confiscation of the vehicle and destruction of the seized liquor was transmitted to the Collector, Saran, which suggests the callous manner in which the quasi judicial functions are being discharged by the respondent authorities, particularly, the Collector.

It also appears that the Collector has not verified the records. Section 73 (e) of the Act mandates that the seizure must be made by a police officer not below the rank of Sub Inspector.

It is submitted by learned AC to SC-5 that proceeding of the said confiscation case will be concluded within a time frame.

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 restrictions can be exercised only in exceptional or in a monstrous situation. Considering the view taken by the Apex Court in the case of **State of Karnataka Vs. K. Krishnan**, reported in (2000) 7 SCC 80 and in the case of **State of West Bengal and Ors. Vs. Sujit Kumar Rana**, reported in (2004) 4 SCC 129, a Full Bench of this Court in the case of **Baleshwar Roy Vs. The State of Bihar and Ors.**, reported in 2018(4) PLJR 970, held 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.”

Since the vehicle in question was seized on 06.11.2019, it is expected that the Respondent No. 3, the District Magistrate-cum-Collector, Saran shall conclude the proceeding of Confiscation Case No. 02/2020 within a period of six weeks from the date of receipt/production of a copy of this 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.

Let a copy of this order be communicated to the
Collector, Saran, through fax, immediately.

(Dinesh Kumar Singh, J.)

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	05-02-2020
Transmission Date	N/A

