

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24611 of 2019

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Munna Yadav @ Munna Kumar Yadav S/o- Baidhnath Chaudhary Resident of
Village- Thephan Mahadeva Tola, P.O.- Thephan, P.S.- Ziradei, District-
Siwan.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Department of Excise and Prohibition, Govt. of Bihar, Patna.
2. The Excise Commissioner Government of Bihar, New Secretariat, Patna.
3. The District Magistrate-Cum- Collector Siwan.
4. The Superintendent of Police Siwan.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Dhananjay Kumar Shahi
For the Respondent/s : Mr.Vivek Prasad (GP7)

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
and
HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

3 28-01-2020 Heard Mr. Dhananjay Kumar Shahi, learned counsel

for the petitioner and Mr. Vivek Prasad, learned GP-7 for the

respondent-State.

The present writ application has been filed for release
of CB Shine Honda Motorcycle bearing Registration No. BR-
29-AG-0839, in favour of petitioner which has been seized in
Mairwa P.S. Case No. 160 of 2019 registered for the offence
punishable under Section 30(a) of 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 by the petitioner as stipulated in paragraph no.1 of the writ application reads as follows :-

“That this is an application for issuance of an appropriate writ of mandamus or other appropriate writ(s), order(s) and direction(s), commanding the respondent no. 3 to release the vehicle (CB Shine Honda Motorcycle) bearing Registration No. BR-29-AG-0839, Engine No. JC65E72313455, Chasis No. ME4JC65AJJ7200734 seized in connection with Mairwa P.S. Case No. 160 of 2019 dated 22.06.2019 registered U/S 30(a) of Bihar Prohibition and Excise Act 2016 allegedly two bags (Total- 45117= 62 liters) of India made foreign liquor (IMFL) had been recovered from Baswari at village – Mishrauli near which three motorcycle are standing in position including the petitioners motorcycle also for which no proceeding of confiscation has been initiated till date, ignoring the vehicle is standing stagnant for three months in open sky at the Mairwa Police Station, Siwan.”

The prosecution case as per the written report of Assistant Sub-Inspector of Police, Shambhu Prasad submitted to the Station House Officer of Mairwa Police Station is to the effect that on 22.06.2019 at 8.00 P.M. during patrolling, secret



information was received that certain persons are concealing liquor in bamboo clump, consequently, a raid was laid and on seeing the police, three persons started fleeing away and on chase being made, one person was apprehended, who disclosed his name as Krishna Choudhary. At the place of raid in village – Misrauli, from bamboo clump, two bags containing altogether 62 litres of Indian Made Foreign Liquor were recovered. Three motorcycles were found parked at the place of recovery were also seized, leading to Mairwa P.S. Case No. 160 of 2019. Prayer has been made for release of one of the motorcycles belonging to the petitioner.

It is submitted by learned counsel for the petitioner that there is no recovery of liquor from the motorcycle in question. The motorcycle has been seized only on the basis of suspicion. The seizure has been made by Assistant Sub-Inspector of Police contrary to the mandate of Section 73(e) of the Act, who is not authorized to make seizure under the Act. It is further submitted that the seizure was made on 22.06.2019 whereas the proposal for initiation of confiscation proceeding was transmitted after this Court permitted learned counsel for the State to file counter affidavit vide order dated 13.12.2019 and consequently, Confiscation Case No. 111 of 2019-20 has



been initiated. Though, a show cause notice has been issued. The said notice has been brought on record as Annexure-A to the counter affidavit, which is almost blank and illegible. It is further submitted that the petitioner is the registered owner of the vehicle in question and certificate of registration on the same has been brought on record, as contained in Annexure-1. It is further submitted that there is no likelihood of conclusion of confiscation proceeding and the vehicle in question is rotting in the open sky.

Learned GP-7 appearing for the State-respondents submits that motorcycle in question has been seized from the place of recovery of liquor. However, there is no recovery of liquor from the motorcycle in question but confiscation proceeding has already been initiated for confiscating the motorcycle in question.

Considering the rival submissions of the parties, prima facie, it appears that the seizure has been made by Assistant Sub-Inspector of Police whereas Section 73(e) of the Act mandates that the seizure has to be made by an officer not below the rank of Sub-Inspector. It also appears that there is no recovery from the motorcycle in question. The motorcycle in question was merely parked at the place of seizure. Section



56(b) of the Act mandates that the vehicle or vessel can only be liable for confiscation if it has been used for carrying the liquor. Section 56(b) of the Act reads as follows:-

“56(b) any intoxicant or liquor lawfully imported, transported, manufactured, sold or brought along with or in additional to, any intoxicant, liable to confiscation under clause(a).”

Section 58(1) of the Act mandates that only the seizing or detaining authority can transmit a report to the Collector of the area for initiating the confiscation proceeding, but contrary to the said provision S.P., Siwan has transmitted the proposal for confiscation to the District Magistrate, Siwan. The confiscation proceeding has been initiated after more than six months of seizure when Section 58(1) of the Act mandates transmission of report without reasonable delay.

In the circumstances, we direct for release of the motorcycle in question to the satisfaction of Respondent No. 3, the District Magistrate -cum- Collector, Siwan in connection with Confiscation Case No. 111 of 2019-20, arising out of Mairwa P.S. Case No. 160 of 2019 provisionally till the



conclusion of confiscation proceeding on the following conditions:-

(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 District Magistrate -cum- Collector, Siwan;

(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 authority concerned;

(V) At the time of release of the vehicle in question, the concerned 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 District Magistrate -cum- Collector, Siwan 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, but it is expected from the Collector-cum-District Magistrate, Siwan, to conclude the confiscation proceeding within a period of six weeks in accordance with the provisions of the Act.

Accordingly, the writ application stands disposed of.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

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