

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.25742 of 2019

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Rina Devi Wife of Indra Sahu @ Indra Kumar Sahu, Resident of Village-
Afjala Tole Khewa, Police Station- Biraul, District- Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Excise and Prohibition, Government of Bihar, Patna.
2. The Divisional Commissioner, Darbhanga.
3. The District Magistrate Cum Collector, Darbhanga.
4. The Senior Superintendent of Police, Darbhanga.
5. The S.H.O.- Cum- Officer in- Charge of Biraul Police Station, District- Darbhanga.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Pankaj Kumar Jha
For the Respondent/s : Mr.Vivek Prasad (Gp7)

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE S. KUMAR)

(The proceedings of the Court are being conducted through Video Conferencing and the Advocates joined the proceedings through Video Conferencing from their residence.)

Date : 08-07-2020

Heard learned counsel for the petitioner and learned
counsel for the State.

Petitioner has prayed for following reliefs:-

- (i) “For issuance of writ/writs, order/orders, direction/directions in the nature of mandamus, commanding / directing the respondents to release the vehicle of the petitioner bearing Registration No. BR-07PA-1820, Engine No. MWE4D24676, Chassis No.MA1TH2MWNE2D40512, Model –



Scorpio LX, which was seized in connection with Biraul P.S. Case No.501/2017 dated 22.12.2017 under Section 37(a)(c) of the Bihar Prohibition and Excise Act, 2016 (Amended)

(ii) For further any other relief/reliefs, order/orders, direction/directions, may deem fit and proper in the facts and circumstances of this case.”

Allegation against the accused persons is travelling and driving on a Scorpio vehicle in a drunken condition after consuming liquor and accordingly Biraul P.S. Case No.501 of 2017 dated 22.12.2017 was instituted under Sections 37(a)(c) of the Bihar Prohibition and Excise Act, 2016 and Scorpio vehicle was seized.

Petitioner claims to be owner of the vehicle and since there is no recovery of any illicit liquor and allegation is driving vehicle in a drunken condition as such, vehicle is not liable for confiscation and bar of jurisdiction in confiscation under Section 60 of the Excise Act is not applicable, as such concerned Special Court (Excise) can exercise jurisdiction under Section 451 of Cr.P.C for release of the vehicle during pendency of criminal trial.

In view of law laid down by Division Bench of this Court in case of Diwakar Kumar Singh vs. State of Bihar since reported in 2018 (3) PLJR 403 and following said judgment as



well as other judgments passed by this Court, the Excise Commissioner, Bihar Patna in appeal arising out of Confiscation Case No. 107 of 2019 Ajit Roy Vs. Collector, Sheohar has held that transportation of prohibited article under the Act is a sine qua non for a vehicle to be confiscated.

The relevant paragraph of order passed in Appeal by Excise Commissioner is quoted below:-

“From the aforesaid judgment and order passed by the Hon’ble High Court of Patna it is well established that the transportation of prohibited article under the Act, 2016, is a sine qua non for a vehicle to be confiscated on the passing of an order by the District Collector. Therefore the confiscation order passed by the learned Collector, Sheohar in confiscation Case No. 107/2019 on 09.12.2019 is hereby ordered to be modified to the extent that the three motorcycles bearing registration No. BR-06BJ 6591; BR-06BL 5384 and BR-55 4036 will be released after verifying the document related to registration and owner of the said vehicle.”

The writ petition is disposed of with liberty to petitioner to file a petition under Section 451 of Cr.P.C for release of vehicle before the concerned Special Court (Excise),



where the trial of case arising out of Biraul P.S. Case No.501 of 2017 is pending and the Special Court (Excise) is directed to dispose of such petition within 30 days from the date of filing.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.07.2020
Transmission Date	NA

