

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.394 of 2020

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Lalbabu Sah Son of Ramkhelawan Sah @ Ranjeet Kumar Sah Resident of Village- Chaksikandar Pachimi Chak, Maripu, Police Station- Tajpur, District- Samastipur, (Owner of Tractor with Dala (Red Colour) bearing No.- BR-33J-8218.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Registration, Excise and Prohibition, Government of Bihar, Patna.
2. The Excise Commissioner Government of Bihar, Patna.
3. The Collector cum The District Magistrate Vaishali at Hajipur.
4. The Superintendent of Police Vaishali at Hajipur.
5. The Officer-in- Charge cum S.H.O. Patepur Police Station under District- Vaishali.
6. The Investigation Officer in Patepur Police Station Case No. 15 of 2019 Under District- Vaishali.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Rajeev Ranjan Sinha
For the Respondent/s : Mr.Vikash Kumar (SC-11)

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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 : 16-01-2020

Heard learned counsel for the petitioner and learned AC to SC-11 for the respondent-State.

The present writ application has been filed for release of the Mahindra tractor of the petitioner, bearing Registration No. BR33J8218, which has been seized in



connection with Patepur P.S. Case No. 15 of 2019, registered for the offences under Sections 30(a), 32(ii), 38(ii) and 41(i) 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, as stipulated in paragraph no.1 of the petition reads as follows:-

“1(i) For issuance of an appropriate writ/writs, order/orders/direction/directions including a writ preferably in the nature of mandamus for the direction to release Red Colour Tractor with Dala bearing Registration No. BR33J8218 Engine No. ROLWO3541 and Chasis No. ROLWO3541 in favour of the petitioner which was seized in connection with Patepur Police Station Case No. 15 of 2019 dated 21.01.2019 for the offences punishable Under Sections 30(a), 32(ii), 38(ii) 41(i) of the Bihar Prohibition and Excise Act, 2016 for Red Colour Tractor with Dala thereafter, the petitioner was made an accused in this aforesaid case which is pending in the Court of Special Judge Excise, Vaishali at Hajipur.

(ii) For grant of such other relief(s) for which the petitioner is found to be entitled in the facts and circumstances of the case.”

The prosecution case as per the written report of A.S.I., Chhotan Kumar, submitted to the S.H.O., Patepur Police Station is to the effect that on 21.01.2019 at 2.30 A.M., the informant received a secret information that at the crushed-rice mill, huge consignment of liquor has been brought and it is



being transported through motorcycle and the tractor to different places, consequently, raid was led and 756.36 litres of Indian Made Foreign Liquor were recovered and several vehicles including the vehicle of the petitioner in question were seized.

It is submitted by learned counsel for the petitioner that the petitioner is the registered owner of the tractor in question. Though the registration of the tractor in question was valid upto 10.10.2014, however the tax was paid up to 10.10.2027, and certificate to that effect has been brought on record as Annexure-2. It is further submitted that admittedly no recovery has been made from the tractor in question and hence, it cannot be said that the vehicle in question was used for carrying the liquor or intoxicant, hence it is not liable for confiscation in view of Section 56(b) of the Act. Moreover, the vehicle in question has been kept in open sky, hence it is unnecessarily rotting and the petitioner is ready to produce the vehicle in question as and when required and will not sell the same to any person till the conclusion of the trial.

Learned counsel for the respondent admits that no recovery has been made from the vehicle in question, however, it is submitted that proposal for initiation of confiscation proceeding has been transmitted, but the confiscation



proceeding has not been initiated.

Having heard learned counsels for the parties, this is not in dispute that no recovery of liquor or intoxicant from the vehicle in question has been made. This is also not a case that the liquor was being carried through the vehicle in question. The FIR was lodged, seizure has been made by ASI of Police whereas Section 73(e) of the Act stipulates that the seizure cannot be made by an officer below the rank of Sub Inspector of Police. Hence, the very seizure appears to be *de hors* the provisions of the Act.

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 to reduce it into junk will ultimately result into waste of public money, which 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 in question,



we direct that the same be released provisionally till the conclusion of the trial or conclusion of confiscation proceeding, if any, to the satisfaction of the A.D.J.-II-cum-Special Judge, Excise, Vaishali at Hajipur, 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.1,50,000/- but not in the form of bank guarantee or cash, with two sureties of the like amount;

(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 learned Court below 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	21.01.2020
Transmission Date	

