

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.25109 of 2019

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Naval Kishor Bharti, Son of Lakshmi Sada, Resident of Ward No. 06, Village-
Murli, Tola Police Station- Mahishi, District- Saharsa.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Home (Excise), Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Collector, Saharsa.
4. The Superintendent of Police, Saharsa.
5. The Station House Officer (S.H.O.), Nauhatta, Police Station, District- Saharsa.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Madhav Jha, Advocate
For the Respondent/s : Mr.Vivek Prasad, GP-7

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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)

2 06-01-2020 Heard Mr. Madhav Jha, learned counsel for the
petitioner and learned AC to GP-7 for the respondent-State.

The present writ application has been filed for release of auto rickshaw bearing Registration No. BR-19P-1231, in favour of petitioner which has been seized in Nauhatta P.S. Case No. 77 of 2019 registered for the offences 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 in the instant writ application the petitioner seeks the following relief/reliefs :-

I) For issuance of an appropriate writ/writs, direction/directions, order/orders especially in the nature of Mandamus with a direction upon the respondent to hand over the petitioner's Tempo to him bearing Registration No. BR-19P-1231.

II) Any other relief/reliefs to which the Petitioner maybe found entitled in the facts and circumstances of the case.”

The factual matrix of the case is that is that the vehicle in question was intercepted and from the alleged vehicle, 34 litres of country made liquor were recovered on 22.07.2019.

It is submitted by learned counsel for the petitioner that the petitioner claims to be the registered owner of the vehicle in question. The copy of the registration certificate of the vehicle in question has been brought on record as Annexure-2. The petitioner was not present in vehicle in question and



hence, it cannot be said that the recovery has been made from the possession of the petitioner.

It is submitted by learned AC to GP-7 that confiscation proceeding with regard to the said vehicle in question has already been initiated vide Confiscation (Excise) Case No.340/19-20 and the same is pending before the Collector, Saharsa. The petitioner has received the notice dated 18.11.2019 issued from the office of Collector, Saharsa and the same has been brought on record as Annexure-3. Hence, it is submitted that the 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, subject to self imposed restriction, has to be exercised in exceptional or monstrous situation. Considering the view taken by the Apex Court in the case of State of Karnataka Vs. K. Krishnan reported in (2000) 7 Supreme Court Cases 80 and in the case of State of West Bengal and Ors. Vs. Sujit Kumar Rana reported in (2004) 4 Supreme Court Cases 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 quivive, 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 it is admitted position that the confiscation proceeding has been initiated, let the Collector, Saharsa conclude the proceeding of the Confiscation (Excise) Case No.340/19-20, arising out of Nauhatta P.S. Case No. 77 of 2019 and dispose of the same by a reasoned and speaking order within a period of eight 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.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

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