

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.297 of 2020

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Yogendra Yadav @ Yogendra Singh, aged about 49 years (M) son of
Rajeshwar Yadav @ Rajeshwar Singh resident of village Lodipur Bara P.O.
Akbarpur P.S. Kinjar District Arwal.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of
Registration, Prohibition and Excise, Government of Bihar, Patna.
2. The Collector / District Magistrate, District Patna.
3. The Excise Superintendent, District Patna.
4. The Superintendent of Police, District Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Paras Nath

For the Respondent/s : Mr. Kumar Pankaj A.C. to S.C.-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 : 04-02-2020

Heard Mr. Paras Nath, learned counsel for the petitioner
and Mr. Kumar Pankaj, learned AC to SC – 5.

The present writ application has been filed for release of
Passion Pro motorcycle bearing registration no. BR01DQ-5816,
which has been seized in connection with Paliganj P.S. Case No.
268 of 2019, registered for the offence punishable under Section
30(a) of the Bihar Prohibition and Excise (Amendment) Act, 2018
(hereinafter referred to as ‘the Act’).

The relief as prayed for in paragraph – 1 of the writ
petition , reads as follows:-



“(i). For issuance of an appropriate writ / writs, order / orders, direction / directions to the respondent no. 2 to release Passion Pro motorcycle bearing registration No. BR01DQ-5816 Chasis No. MBLHAR 186JHB09030 and Engine No. HA10ACJHB39704 which was seized in connection with Excise Case (Special) No. 6710 / 019 arising out of Paliganj P.S. Case No. 268 / 019 for the offence U/S 30(a) of Bihar Prohibition and Excise (Amendment) Act, 2018, may be issued.

(ii). For issuance of any other appropriate writ / writs, order / orders, direction / directions as the fact and circumstances of the case may require and deemed fit by this Hon’ble Court, may also be issued.

(iii) For issuance of any appropriate writ / writs, order / orders, direction / directions commanding the respondents to grant any other relief / reliefs to which the petitioner is held entitle in the facts and circumstances of the case.”

The prosecution case got initiated on the basis of self statement of Mr. Ashwini Kumar, Inspector- cum- S.H.O., Paliganj



P.S. recorded on 27.07.2019 at 8.00 P.M. to the effect that on 27.07.2019 at 7.15 P.M., he received an information that in the shop of Yogendra Yadav situated in Akwarpur Musahari, illegal liquor has been kept stored. Consequently, a raid was conducted and the motorcycle in question was found parked and from the shop of Yogendra Yadav, 15 liters of country made liquor and from the motorcycle of petitioner, 05 liters of country made liquor was recovered, leading to registration of F.I.R. vide Paliganj P.S. Case No. 268 of 2019 on 27.07.2019.

It is submitted by learned counsel for the petitioner that petitioner is the registered owner of the vehicle in question and statement to that effect has been made in paragraph no. 5 of the writ petition. The certificate of registration of the vehicle in question has been brought on record, as Annexure – 2 to the present writ petition. He further submits that the motorcycle in question is rotting in open sky and keeping the vehicle in such condition and allowing it to reduce into a junk would ultimately result into waste of public money. It is further submitted that the petitioner is ready to produce the vehicle in question as and when required by the Court below.

However, learned AC to SC – 5 relying upon the counter affidavit filed on behalf of respondent nos. 2 and 3 dated



22.01.2020 submits that the confiscation proceeding being Confiscation Case No. 2443 of 2019-20 has been initiated and the vehicle in question has been confiscated vide order dated 17.01.2020 passed in Confiscation Case No. 2443 of 2019-20 by the learned Collector -cum-District Magistrate, Patna and the Sub Divisional Officer, Paliganj has been directed to get the value of the motorcycle assessed by the District Transport Officer, Patna and to conduct auction sale the vehicle and deposit the money into the Government treasury.

Considering the fact that the confiscation proceeding has already been concluded and there is alternative efficacious remedy of appeal under Section 92(2) of the Act against the order of the Collector before the Excise Commissioner, Government of Bihar, Patna within a period of ninety days from the date of the order being complained of, we are not inclined to interfere at this stage. Moreover, it is well settled that the discretionary jurisdiction under Article 226 of the Constitution of India, being a self – imposed restriction can only be exercised when the writ petition has been filed for the enforcement of any of the fundamental rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the *vires* of an Act is challenged. The Apex Court in the case of



Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Ors. reported in (1998) 8 Supreme Court Cases 1 has held as follows:-

“15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the Writ Petition has been filed for the enforcement of any of the Fundamental rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.”

It is well settled law that the discretionary jurisdiction under article 226 of the Constitution of India, having self imposed



restriction can be exercised in exceptional circumstances where the alternative efficacious remedy are not available. However, in the present case we do not find any exceptional circumstance to entertain the application. Moreover, the final order passed in Confiscation Case No. 2443 of 2019-20 has still not been challenged.

In the circumstances, we dispose of the writ application with liberty to the petitioner to prefer appeal before the Excise Commissioner, Government of Bihar, Patna within a period of four weeks from the date of receipt / production of a copy of this order. It is expected that the appellate authority shall consider and dispose of the appeal within a period of ten weeks from the date of its filing if such appeal is filed within the prescribed period.

It is made clear that if the vehicle in question has not been put to auction sale, then it shall not be put to auction sale till the conclusion of appeal.

Accordingly, the writ petition is disposed of.

(Dinesh Kumar Singh, J)

praful/-

(Anil Kumar Sinha, J)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17-03 -2020
Transmission Date	NA

