

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24666 of 2019

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Jitan Paswan @ Jeet Paswan Son of Rudal Paswan Resident of Village-
Ramshala, P.S.- Sadar, District- Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Registration, Excise Prohibition Department, Government of Bihar, Patna.
2. The District Magistrate, Darbhanga.
3. The Senior Superintendent of Police Darbhanga.
4. The Assistant Sub- Inspector, Sadar Police Station, Darbhanga.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Girish Chandra Jha
For the Respondent/s : Mr.Kumar Manish (Sc5)

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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 : 29-01-2020

Heard Mr. Girish Chandra Jha, learned counsel for
the petitioner and Mr. Prashant Kumar, learned A.C. to S.C. - 5 for
the respondents.

The present writ application has been preferred for
release of Platina motorcycle of the petitioner bearing Registration
No. BR-07-AJ-4941 which has been seized in connection with
Darbhanga Sadar P.S. Case No. 289 of 2019, registered for the
offence punishable under Section 30(a) 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 claimed by the petitioner in paragraph No.1 of the writ application reads as follows :-

“1. That the present writ application is being filed for issuance of writ/ writs, order/orders, direction/directions to the respondent authorities to release the Platina Motorcycle of the petitioner bearing Registration No.BR07AJ-4941 Engine No. PFYRJE05557, Chasis No.-MDZA76AY9JRE84638 in favour of the petitioner which was seized by the Assistant Sub-Inspector, Sadar Police Station (Respondent no.4) in connection with Sadar P.S. Case No.289 of 2019 dated 17.07.2019 registered for the offence under Section 30(a) Bihar Prohibition and Excise Act, 2016 and/ or for any other relief or reliefs to which the petitioner may be found entitled in course of hearing of this writ application.”

The prosecution case got initiated on the basis of the written report submitted by Mr. Shivram, A.S.I. of Police, submitted before the S.H.O., Darbhanga is to the effect that on 17.07.2019, at 1.00 P.M., during vehicle check, one motorcycle was intercepted on which Hira Paswan and Bipin Paswan were traveling. The seized motorcycle was found without having any registration plate and from the bag kept in between the driver and the pillion rider, 7.5 litres of country-made liquor was recovered, leading to registration of Darbhanga Sadar P.S. Case No. 289 of 2019.

It is submitted by learned counsel for the petitioner that the petitioner is the registered owner of the vehicle in question and a copy of certificate of registration has been brought on record as



Annexure-1 to the writ application. The vehicle was registered on 29th June, 2019. The petitioner was not traveling on the motorcycle in question, hence the presumption of innocence is there in favour of the petitioner. The petitioner was not named in the First Information Report . The investigating agency without verifying ownership of the vehicle in question made recommendation for confiscation being Darbhanga Sadar P.S. Case No.289 of 2019 vide letter dated 18.09.2019 and consequently mechanically the Collector-cum-District Magistrate, Darbhanga vide order dated 08.11.2019 initiated confiscation case bearing Confiscation Case No.254 of 2019 and issued notice only to Hira Paswan and Bipin Paswan but no notice has been issued to the petitioner. Hence, in the eye of law there is no confiscation proceeding initiated against the petitioner and the vehicle in question is rotting in the open sky.

Mr. Prashant Kumar, learned A.C. to S.C.5 submits that though the seizure has been made by the ASI who is not authorized under Section 73(e) of the Act but now the confiscation proceeding being Confiscation Case No.254 of 2009 has been initiated vide order dated 08.11.2019 and notices have been issued to Hira Paswan and Bipin Paswan pursuant to which Bipin Paswan, son of the petitioner has appeared. Statement to that effect has been



made in paragraph No.5 of the counter affidavit dated 22.01.2020 filed by respondent No.2, District Magistrate, Darbhanga. Hence the vehicle in question may not be released.

Considering the fact that Section 73(e) of the Act stipulates that the seizure cannot be made by an officer below the rank of Sub Inspector of Police. It appears that the petitioner was not named in the F.I.R.. From the material available on record, it appears that the Sr. S.P., Darbhanga vide letter No.908 dated 18.09.2019 transmitted a report under Section 58(1) of the Act for initiating the confiscation proceeding.

Section 58 (1) of the Act mandates that anything is liable for confiscation under the Act, is seized or detained, the officer seizing and detaining such property shall without any reasonable delay submit a report to the District Collector, but in the present case, report has not been transmitted by the person authorized under the law. Even A.S.I. who has made the seizure though he was not authorized to make a seizure but as per the Section 58(1), he was the competent person to transmit the report under the Act. From the order of the District Magistrate dated 08.11.2019 in Confiscation Case No.254 of 2019, it appears that neither the Collector nor the Sr. S.P. has verified this fact that who is the owner of the vehicle in question. Hence, it appears that the



exercise of jurisdiction under Section 58 of the Act by the Collector is absolute with non-application of mind and it reflects the callous manner in which the quasi judicial function is being discharged.

Having heard learned counsels for the parties and considering their rival submissions, we are of the considered view that the FIR was lodged and seizure has been made by A.S.I. 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. Section 73(e) of the Act reads as under :-

“73. Power to enter, inspect, search and seize.—
Any of the following officers namely:
(e) Any police officer not below the rank of Sub Inspector; or”

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 and to reduce it into a junk which has been deprecated by the Supreme Court in the case of **Sunderbhai Ambalal Desai Vs. State of Gujrat** and other analogous cases reported in **(2002) 10 SCC 283** and in the case of **General Insurance Council and Ors. Vs. State**



of Andhara Pradesh and Ors. reported in (2010) 6 Supreme Court Cases 768.

Accordingly, we direct that the same be released provisionally till the conclusion of the trial or till the conclusion of confiscation proceeding, if any, to the satisfaction of learned Additional District and Sessions Judge-cum-Special Judge (Excise), Darbhanga 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 A.D.J.-cum-Special Judge, Excise, Darbhanga or the confiscation authority, as the case may be;

(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, but it is expected from the Collector-cum-District Magistrate, Darbhanga, to conclude the proceeding of Excise Confiscation Case No. 254 of 2019 within a period of six weeks, in view of the discussions made above, in accordance with law.



Accordingly, the writ application is allowed to the extent
as indicated above.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

sanjeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.02.2020
Transmission Date	NA

