

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24694 of 2019

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Moqimuddin Son of Shekh Kalimuddin, Resident of Village- Bharsia,
Jharuchak, P.S. Falka, District- Katihar.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Excise and Prohibition, Govt. of Bihar, Patna.
2. The District Magistrate, Katihar.
3. The Senior Superintendent of Police, Katihar.
4. The SHO Falka, District- Katihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Nafisuzzoha
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)

Date : 08-07-2020

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

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

Petitioner has prayed for following reliefs:-

“For issuance of an appropriate writ in the nature of mandamus for direction the respondents to release the Tempoo (three wheeler) of the petitioner bearing Registration No. BR 11 T-5180, registered on 11.09.2014, Chasis No.



MBX0000ZFSH943223, Engine No. R4H2530398 brand name PIAGGIO/APE/PASSENGE DIESEL which was seized in connection with Falka P.S. Case No. 373/2019 dated 20.09.2019 u/s 30(a), 30(c), 37(C) of the Bihar Prohibition and Excise Act.”

Informant has alleged in his FIR that on receiving confidential information that country made liquor is being prepared in the house of Vidya Nand Rishi he alongwith other police personnel raided the house and Vidyanand Rishi was apprehended while he was trying to flee away and thereafter his house was searched from where 5 litter of country made liquor kept in plastic gallon was recovered and as he came out of his house one tempo with one passenger came there and on seeing the police they tried to flee away, however they were apprehended after chase and disclosed their name as Md. Masook and Kumar Sah and from the tempo 50 tins of Rava, Chhowa, Sakkar (Molasses) was recovered and tempo and Rava Chhowa and Sakkar (Molasses) were seized for which Falka P.S. Case No. 373/19 dated 20.09.2019 was registered under Section 30(a) and 37 (C) of the Bihar Prohibition and Excise Act.

It has been submitted on behalf of petitioner that Rava, Chhowa, Sakkar (Molasses) is not an intoxicant as



defined under the Excise Act and as such his vehicle cannot be confiscated under Section 58 of the Excise Act.

Counter affidavit has been filed on behalf of respondents in which it has been stated that S.P., Katihar vide his letter dated 29.12.2019 has recommended to initiate confiscating proceeding against the vehicle and thereafter Confiscation Case No. 380/2019-20 have been initiated on 11.01.2020 and notices have been issued to the petitioner to file his show cause.

The Division Bench of this Court in C.W.J.C. No. 4631 of 2019 (Ashok Choudhary @ Ashok Pasi Vs. The State of Bihar & Ors.) has held that mere seizure of Molasses from vehicle on its own cannot lead to confiscation proceeding against said vehicle unless the circumstances on the spot were sufficient enough to confirm that the Molasses seized was to be converted into spirit or liquor. The relevant paragraph is quoted below:-

“No doubt Chowa(Kala gur) is the basic raw material, a mother tincture for preparation of spirit which in turn is capable of being used as an intoxicant of any nature described in Section 2(44) and may be, if the raiding party had come across any implement/machinery etc. which was capable of turning Chowa(Kala gur)



into spirit, there would exist sufficient reason for the prosecuting party to move ahead but a mere possession of Chowa(Kala gur), mahua, rice, gur or grains at the hands of any person simplicitor, cannot be a reason for registering a case under 'the Act' or for prosecuting him or for drawing a confiscation proceeding until such time that the respondents are able to show that the Chowa(Kala gur) in question was to be used for the preparation of spirit, which is not the case rather it is simply proceeding on the disclosure so made by the arrested person with no accompanying circumstances existing which would confirm a valid seizure under 'the Act' that on mere recovery of Chowa(Kala gur) in possession of the brother of the petitioner, a police case was registered leading to registration of the confiscation case and ultimately order of confiscation passed”

“Section 2(16) of 'the Act' defines country or traditional liquor and the legislature has been cautious enough to avoid any misuse of the provision by clarifying that it is only a seizure of plain or spiced spirit, whether made from Mahua, rice, gur, molasses or grains, which invites a seizure and consequently a confiscation and not Mahua, rice, gur, molasses or grains on its own and we further clarify that unless the circumstances on the spot were sufficient enough to confirm that the ‘Chowa’ seized, was to be



converted into spirit or liquor, no seizure can take place .As we have observed the F.I.R. on record while confirming that the seizure was made on a public road, even the disclosure made by the person concerned did not lead to any such situation which could confirm to a valid seizure because nothing was found that on the spot that would take the allegation to its conclusion regarding preparation of spirit from the Chowa (Kala gur)’’.

On the basis of observation as made above, writ petition is disposed of with a direction to the District Collector, Katihar to decide the Confiscation Case No. 380/2019-20 within 90 days from date of receipt/production of a copy of order passed by this Court, failing which he shall release the vehicle provisionally till conclusion of confiscating proceeding on the production of document of ownership and registration in his name with two sureties (one local) to the extent of the value of the vehicle as indicated in insurance document.

The petitioner while submitting the surety bond shall also furnish the following affidavit/undertakings:-

- (i) That the vehicle in question has never been involved in any offence of similar nature in past and shall not indulge in similar offence in future.
- (ii) That the petitioner shall not indulge in creating any third party right or interest in



respect of the vehicle during the pendency of the proceeding and shall not alienate the vehicle during this period.

(iii) The petitioner shall furnish an undertaking to produce the vehicle before the confiscating authority as and when required.

(iv) Prior to release the vehicle a Panchnama would be got prepared by the confiscating authority wherein the photograph of the vehicle shall be taken and will be certified by the petitioner and the same shall be kept on record so that in future if so required it may be used as a secondary evidence. The petitioner shall undertake not to challenge the said Panchanama in course of proceeding/trial.

(Sanjay Karol, CJ)

(S. Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	
Transmission Date	N.A.

