

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24838 of 2019

Suraj Kumar aged 30 yrs. Male S/O Dasharath Singh @ Dashrath Singh, R/O Village- Shiopur (Sheopur, Shivpur), P.S. -Sadgawan, District- Kodarma.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Excise Commissioner, Bihar, Patna.,
3. D.M., Nawada.
4. S.P., Nawada.
5. S.H.O., Govindpur, Nawada.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mrs. Rina Sinha

For the Respondent/s : Mr. Kumar Pankaj, A.C. to S.C. - 5

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
and
HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

Date : 25-09-2020

Heard Mrs. Rina Sinha, learned counsel for the petitioner and Mr. Kumar Pankaj, learned A.C. to Standing Counsel No. 5.

The present writ application has been filed for release of PASSION PRO motorcycle bearing registration no. JH-12H-8304, which has been seized in connection with Govindpur P.S. Case No. 57 of 2016 registered for the offence punishable under Section 47(a) of the Bihar Excise Amendment Act, 2016. The relief, as prayed for, in paragraph no. 1 of the writ petition reads as follows:-

“ That, the present writ application is being filed by the petitioner for issuance of an appropriate writ / writs directing the respondents



to release the vehicle of the petitioner which was seized by Umashankar S.H.O. of Govindpur P.S. in Govindpur P.S. Case No. 57 / 2016 which is pending before Lrd. Special Judge Excise, Patna”

The prosecution case got initiated on the written report of Umashankar, Station House Officer, Govindpur P.S. addressed to the Chief Judicial Magistrate, Nawada to the effect that on 07.07.2016 at about 2.15 P.M. the Block Development Officer, Govindpur informed the informant that his driver Ibrahim has seized the liquor in Mahabara. Consequently, the informant along with Police force reached at the spot where the driver of the B.D.O., namely, Ibrahim conveyed that four boys escaped from the scene after leaving two motorcycles and he has kept the two motorcycles and the liquor near his house and consequently the informant seized the two motorcycles one being red colour Shine motorcycle bearing Registration no. B.R.-27E-5071 and another black colour Passion Pro motorcycle, without any registration number plate and a white colour sack was kept at the same place, which contained a carton box. The seizure was made near the house of Ibrahim situated in village- Mahabara. Consequently, it was searched whereupon twenty four bottles of Kingfisher Beer was found from a white sack and from the dicky of black colour



Passion Pro motorcycle nine bottles of 375 ml each of Indian make foreign liquor were recovered. Thereafter the seizure was made leading to registration of Govindpur P.S. Case No. 57 of 2016.

Learned counsel for the petitioner submits that petitioner is the owner of the Passion Pro motorcycle bearing Registration no. JH-12H-8304. The certificate of registration of the vehicle in question has been brought on record as Annexure- 2 to the present writ petition. It is further submitted that the motorcycle in question has not been seized by the informant / Officer-in-charge of the case. The motorcycle was in parked position. Learned counsel for the petitioner further submits that though the motorcycle in question has been seized, but admittedly petitioner was not apprehended from the spot. It is further submitted that the F.I.R. was registered on 07.07.2016 but it was received in the court of learned Chief Judicial Magistrate, Nawada on 10.07.2016. The writ application was filed on 10.12.2019. The matter was adjourned on 06.01.2020 to enable learned counsel for the respondent – State to seek instruction and file counter affidavit, and thereafter, again it was taken up, but no counter affidavit was filed, and ultimately, the Additional Superintendent of Police-cum-Nodal Officer, Prohibition Cell, Nawada recommended for confiscation of the motorcycle in question however, till date no



confiscation proceeding has been initiated and the motorcycle is rotting in open sky. The provisions of Bihar Excise (Amendment) Act, 2016 is not applicable since the case was registered prior to coming into force of this Act.

Learned counsel for the respondent – State on the basis of counter affidavit filed on behalf of the respondent nos. 4 and 5 i.e. Superintendent of Police, Nawada and S.H.O., Govindpur, Nawada, respectively, submits that recovery was made from the motorcycle also, though at the time of seizure, the motorcycle in question and the liquor were found in the constructive possession of the driver of the B.D.O. namely, Ibrahim. However, vide order dated 21.01.2020 the Additional Superintendent of Police -cum- Nodal Officer, Prohibition Cell, Nawada recommended for confiscation of the motorcycle in question.

From perusal of the F.I.R. it appears that the actual seizure was not made by the informant. The motorcycle and the liquor were in constructive possession of the driver of the B.D.O., namely, Ibrahim near his house. Hence, it cannot be treated as a seizure in true sense from the possession of the petitioner particularly in view of Section 73 of the Bihar Excise (Amendment) Act, 2016 and in view of Section 73 of the Bihar Prohibition and Excise (Amendment) Act, 2018, which stipulates



the officers who are empowered to conduct search, seizure and arrest. The driver of the B.D.O. is not empowered to conduct the search in view of Section 73 of the Act. It further appears from the counter affidavit on perusal of the letter of the Additional Superintendent of Police - cum - Nodal Officer, Prohibition Cell, Nawada dated 21st January, 2020 whereby the recommendation has been made for confiscation of the motorcycle in question, that it has been recommended after about 3 ½ years from the date of actual seizure, that too only after the writ application was filed on 10th December, 2019 and this court adjourned the matter on 06.01.2020 allowing the learned counsel for the respondent - State to file counter affidavit. From perusal of the said letter, it does not become clear, as to on whose action and whose recommendation the Additional Superintendent of Police – cum - Nodal Officer, Prohibition Cell, Nawada transmitted the recommendation for confiscation of the motorcycle in question, since the same has not been mentioned. It further appears that for confiscation of the other motorcycle seized simultaneously, recommendation was made vide Memo no. 887 dated 26.06.2019, which suggests the callous manner in which the provisions of the Act are being followed.



In the present case, a question arises whether Section 58(1) of the Act permits initial seizure by a private person and thereafter ultimate seizure by the Police Officer from the said private person. Section 58(1) of the Act envisages transmission of the report by the seizing or detaining authority but admittedly the same has not been done in the present case. The said provision also prescribes the seizing or detaining authority to transmit a report to the Collector having jurisdiction over the said area without any reasonable delay. In the present case it has not been done. Moreover, it is admitted by learned counsel appearing for the respondent – State that confiscation proceeding has not been initiated till date.

Considering the lapses conducted by the prosecuting agency and in view of the huge pendency of Excise Act cases, it does not appear that the trial or the confiscation proceeding, if initiated, will get concluded in the near future. Moreover, learned counsel for the respondents has no objection to the provisional release of the vehicle in question. Besides this, allowing the vehicle to rot under the open sky and reduce it into a junk would ultimately result into waste of public money and a national loss which has been deprecated by the Hon'ble 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 vehicle in question be released provisionally till the conclusion of the trial or till the conclusion of confiscation proceeding, if any, to the satisfaction of learned Special Judge Excise, Patna or the confiscating authority 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 learned Special Judge Excise, Patna 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 shall be done by the learned Special Judge, Excise, Patna or the confiscating authority within three weeks of receipt / production of a copy of this order.

Accordingly, before parting with the judgment, we make it clear that we have not expressed any opinion on the merits of the case. However, it is expected either from the learned Special Judge Excise, Patna or the authority concerned i.e. the Collector, Nawada that if any confiscation proceeding is initiated, it shall be conducted strictly in accordance with the provisions of the Act.



The writ petition with above observation and direction is
disposed of

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

praful/-

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

