IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.771 of 2020

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Niranjan Yadav, aged about 36 years (Male), S/o Lal Vachan Yadav, Resident of Village- Panditpur, P.S.-Buxar (M), District- Buxar.

... ... Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary, Bihar Excise Department at Patna.
2. The Divisional Commissioner, Patna Division at Patna.
3. The Collector, District of Buxar at Buxar.
4. The Superintendent of Police, District- Buxar at Buxar.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr.Arun Kumar Gupta
For the Respondent/s : AC to GP-7

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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 : 14-01-2020

Heard learned counsel for the petitioner and learned A.C. to Government Pleader No. 7.

The present writ application has been for quashing the order dated 02.08.2019 passed in Case No. 14 / 2018 (Confiscation) by the learned Collector, Buxar, whereby the Mahindra Pick-Up Van bearing Registration No. BR44G-0252 seized in connection with Dhansoi P.S. Case No. 150 of 2017 registered for the offences punishable under Sections 272 / 273 of the Indian Penal Code, 1860 and Section 30(a) of the Bihar Prohibition and Excise Act, 2016 as amended by the Amendment

Act 8 of 2018 (hereinafter referred to as 'the Act') has been confiscated.

The prosecution case got initiated on the basis of the self statement of Sri Ravikant, S.H.O., Dhansoi P.S. registered on 22.10.2017 at 5.15 P.M. to the effect that on secret information the Pick -Up Van was intercepted from which 1252.8 liters of Indian made foreign liquor was recovered leading to registration of Dhansoi P.S. Case No. 150 of 2017.

Learned counsel for the petitioner submits that subsequent to the registration of the case, Case No. 14 of 2018 (Confiscation) was initiated and vide order dated 02.08.2019 passed by the learned Collector- cum- District Magistrate, Buxar the seized Pick -Up Van in question was confiscated and thereafter, the Incharge Officer (Legal Section), Buxar has been directed to get the vehicle auctioned sold. It is further submitted by learned counsel for the petitioner that the petitioner has preferred an appeal vide Appeal No. 49 of 2019 before the learned Excise Commissioner, Patna against the final order dated 02.08.2019 passed in Case No. 14 / 2018 (Confiscation) but the same is still pending, however, the vehicle in question has still not been auctioned sold. Hence, the petitioner confines his prayer for disposal of the writ application with a direction to the authorities concerned to conclude the proceedings of the appeal within a period of eight weeks and if the vehicle in question has not been put to auction sale till date, then it may not be put to auction sale till disposal of the appeal.

Learned counsel for the State has no objection with regard to disposal of the writ application to the extent of direction by this Court for disposal of the appeal in a fixed time frame and if the vehicle has not been put to auction sale till date, it may be not be auctioned till the disposal of the appeal.

Considering the submissions of the parties and keeping in view the fact that the petitioner has alternative efficacious remedy and during the pendency of the appeal the present writ application has been filed, we are not inclined to interfere in view of the fact that it is well settled law that discretionary jurisdiction under Article 226 of the Constitution of India having self imposed restriction can only be exercised in exceptional cases such as where the fundamental rights have been violated or where the order or proceeding in question is wholly without jurisdiction or where there is gross violation of the principle of natural justice or where the *vires* of an Act is under challenge as has been held by the Hon’ble Apex Court in the case of Whirlpool Corporation Vs.

Registrar of Trade Marks, Mumbai and Ors., reported in (1998) 8 Supreme Court Cases 1 which reads 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."*

In view of the discussions made hereinabove it is expected from the appellate authority i.e. learned Excise

Commissioner, Patna to conclude the proceedings of Excise Appeal No. 49 of 2019 within a period of two months from the date of receipt / production of a copy of this order in accordance with law.

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

Accordingly, the writ application 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	18-01 -2020
Transmission Date	NA