

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.170 of 2020

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Dharmendra Kumar Pandit Son of Late Shankar Pandit Resident of Village-
Bhagwanpur Hat, P.S.- Bhagwanpur Hat, District- Siwan.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise Department,
Government of Bihar, Patna.
2. The Director General of Police Bihar, Patna.
3. The Excise Commissioner Bihar, Patna.
4. The Inspector General of Police Bihar, Patna.
5. The District Magistrate/Collector Siwan.
6. The Superintendent of Police Siwan.
7. That Excise Superintendent of Police Siwan.
8. The Officer-in-Charge of Siwan Town Police Station, District- Siwan.
9. The Investigating Officer of Siwan Town P.S. Case No. - 318/2018 dated-
23.05.2019 District- Siwan.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Javed Aslam
For the Respondent/s : Mr.Vikash Kumar (SC 11)

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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 : 31-01-2020

Heard Mr. Javed Aslam, learned counsel for the
petitioner and Mr. Akash Chaturvedi, AC to learned SC 11 for
the respondents.

The present writ application has been filed for release
of the Bolero vehicle bearing Registration no. BR 04PA 0802,
seized in connection with Siwan Town P.S. Case No.318 of



2019, registered for the offences punishable under Sections 30(a) and 32(2) of Bihar Prohibition and Excise Act, 2016, as amended by Amendment Act 8 of 2018 (hereinafter referred to as the Act).

The relief claimed by the petitioner in paragraph 1 of the writ petition reads as follows:

“To release the vehicle, Bolero bearing Registration No.- BR-04PA-0802, Chassis No.- MA1XJ2GHKG2K67540, and Engine No.GHG4J59392 in favour of the petitioner which was seized in connection with Siwan Town, P.S. case No.-318/2019 dated 23.05.19 registered for the offence under sections 30(a) 32(ii) of Bihar Prohibition and Excise Amendment Act,2018.”

The factual matrix of the case is that the Bolero in question was intercepted by the police and in course of search, recovery of 79.920 litres of Indian Made Foreign Liquor was made from the vehicle in question, leading to registration of Siwan Town P.S. Case No.318 of 2019.

It is submitted by learned counsel for the petitioner that the petitioner is the bonafide owner of the Bolero vehicle in question and the certificate of registration of the same has been brought on record as Annexure 2 to the writ application.



It is further submitted that the Bolero vehicle in question is rotting in open area. However, the confiscation proceeding being Confiscation Case No. 230 of 2019-20 has been initiated and the same is pending before the Collector, Madhubani.

Learned counsel for the respondents, relying upon the counter affidavit filed on behalf of respondent no.5, the District Magistrate, Siwan duly sworn by the Superintendent of Excise, submits that the confiscation proceeding being Confiscation Case No. 112 of 2019-20 has been initiated against the vehicle in question and notices in the said confiscation proceeding has been issued, hence the vehicle in question may not be released.

The matter was heard on 13.1.2020 and thereafter, the confiscation proceeding has been initiated which suggests the callous manner in which the quasi judicial proceeding has been conducted by the authority.

Even if the vehicle is not liable for confiscation, the Special Judge under the Act, in view of the bar under Section 60 of the Act, does not have the jurisdiction to direct for the release of the seized vehicle. However, this Court is of the view that such bar will not operate in exercise of jurisdiction under Article 226 of the Constitution of India, since such



power is very much required to be exercised in the given prevailing alarmingly monstrous situation. Considering the view taken by the Apex Court in the case of State of Karnataka Vs. K. Krishnan, reported in (2000) 7 Supreme Court Cases 80 and in the case of State of West Bengal and Ors. Vs. Sujit Kumar Rana, reported in (2004) 4 Supreme Court Cases 129, a Full Bench of this Court in the case of Baleshwar Roy Vs. The State of Bihar and Ors , 2018(4) PLJR 970, held as follows:

“62. It may, however, be added that Article 226 of the Constitution of India provides power to the High Court to issue writs to any person or authority, including in appropriate cases, any Government, any order or writs (including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part-III and for any other purpose). Similarly Article 227 of the Constitution of India provides the power of superintendence over all Courts and Tribunals throughout the territories in relation to which any High Court exercises its jurisdiction. The powers of the High Court under Articles 226 and 227 of the Constitution of India cannot be curtailed under any circumstance, as the power flows from the Constitution itself. No statutory bar can affect



the power of the High Court under Articles 226 and 227 of the Constitution of India.

63. Despite such wide and untrammelled powers, without any circumscription by external restrictions, the Courts have evolved certain self-imposed limits while exercising these powers. The High Courts, normally, would not go beyond justified inhibitions under any Statue except where there is a complete jettisoning of rule of law or under exceptional circumstances which demand timely judicial interdict. This inhibition is basically ordained, keeping in mind that there is a national weal behind any valid piece of Legislation incorporating and inhering in itself the social objective behind any Legislation. Though, no limitations or fetters have been put on the powers of the High Court under Articles 226 and 227 of the Constitution of India, as the High Courts perform as sentinel on the qui-vive, but such power is not to be exercised casually and without coming to the conclusion that non-exercise of such power would lead to positive injustice. Times without number, it has been held by the High Courts that only under condition of a person establishing that substantial injustice has or is likely to ensue, such extraordinary powers can be exercised. It needs no adumbration by this date that the plenary powers of the High Court have only to be exercised in the interest of justice.

64. Thus, an order of release may be



passed under Article 226/227 of the Constitution of India, even pending confiscation proceedings, but only when it is established before the Court that the procedure prescribed and the law in that regard has been completely flouted and that there is complete violation of the procedure prescribed for confiscation, viz., notice to the offender before confiscation, allowing him opportunity of giving written representation and affording hearing on the issue to him and that such injustice cannot be remedied without the exercise of the extraordinary power.

65. Needless to state that under Article 226 of the Constitution of India, the Court will not go into the disputed question of facts.

66. Thus, the powers directing for release of the vehicles or goods, during the pendency of the confiscation, can only be sparingly exercised under monstrous situations and circumstances when injustice occurs because of non-fulfillment of the conditions for confiscation.”

Keeping in view the above mentioned ratio laid down in the Full Bench judgment (supra), since the confiscation proceeding has been initiated, we are not inclined to interfere in the matter. However, it is expected from the District Magistrate, Siwan to conclude the confiscation proceeding being Confiscation Case No. 112 of 2019-20 in accordance with law within a period of



six weeks from the date of receipt/production of a copy of this order after giving due opportunity of hearing to all affected persons.

Needless to say that the Act being a stringent Act, the District Magistrate, Siwan, while concluding the confiscation proceeding, will consider whether the procedural safeguard has been followed meticulously.

This writ application is, accordingly, disposed of with the aforementioned observation/direction.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

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CAV DATE	
Uploading Date	
Transmission Date	

