

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.187 of 2020

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Sarasvati Devi @ Sarasvati Kumari D/o Kedar Paswan R/o Vill.- Rupahatha,
P.S.- Amjhor, District- Rohtas at Sasaram.

... .. Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Govt. of Bihar, Patna.
2. The Director General of Police Bihar, Patna.
3. The Principal Secretary Excise, Govt. of Bihar, Patna.
4. The Collector Rohtas at Sasaram.
5. The Station House Officer Kochas.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ashok Kumar Singh
For the Respondent/s : Mr.Vivek Prasad (Gp7)

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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 : 03-02-2020

Heard Mr. Ashok Kumar Singh, learned counsel for the petitioner and learned A.C. to G.P.-7 appearing on behalf of the respondents.

The present writ application has been filed for release of Hero Splendor plus motorcycle bearing Registration No.BR-24X1990 in favour of the petitioner, which has been seized in connection with Kochas P.S. Case No.53 of 2019, registered for offence punishable under 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').

The relief, as prayed for in paragraph No.1 of the writ application reads as follows :-

"1. (a) For declaring seizure of vehicle of the petitioner being Splendor Plus, Registration No.-BR24X1990, Engine No.HA10AGJHD34084, Chasis No.MBLHAR073JHD25605 in Kochas P.S. Case No.53/2019 dated 08.03.2019 for the offences u/s 30(a) Bihar Prohibition and Excise Act, 2018 is illegal, unwarranted and bad in law.

(b) For commanding the State respondents including the District Magistrate, Rohtas at Sasaram forthwith to release the vehicle of the petitioner being Splendor Plus, Registration No.-BR24X1990, Engine No.HA10AGJHD34084 and Chasis No.MBLHAR073JHD25605 in Kochas P.S. Case No.53/2019 dated 08.03.2019 as contained in Annexure-2.

(c) For declare offence u/s 30(a) of Bihar Prohibition and Excise Act, 2018 is not applicable in Kochas P.S. Case No.53 of 2019 in which the vehicle of the petitioner has been seized.

(d) For any other relief/reliefs, order/orders, direction/directions for which the petitioner is entitled in the eye of law.

Prosecution case got initiated on the basis of written report of Baleshwar Sharma, Sub Inspector of Polic, Kochas submitted to S.H.O. Kochas P.S. to the effect that on 08.03.2019, during patrolling, a secret information was received that a person is selling liquro on his motorcycle, whereupon a motorcycle was intercepted and 2.880 litres of Indian Made Foreign Liquor were



recovered and the vehicle was seized, leading to registration of Kochas P.S. Case No.53 of 20196.

It is submitted by learned counsel for the petitioner that the petitioner is the registered owner of the vehicle in question and certificate of registration of the vehicle has been brought on record, as Annexure-1 to the writ application. Learned counsel for the petitioner further submits that the vehicle in question is rotting under open sky.

Learned counsel for the State relying upon the counter affidavit filed on behalf of respondent No.4 submits that the proposal for initiating the confiscation proceeding was transmitted to S.P. Rohtas vide letter No.1634 dated 26.07.2019 on the request of the S.H.O. Kochas and subsequently, Confiscation Case No.154 of 2019 has been initiated and notices have been served upon the petitioner, but the petitioner has not appeared in the confiscation.

Though we have noticed the report under Section 58(1) of the Act has not been transmitted by the seizing or detaining authority, but the notices have been issued to the petitioner and confiscation proceeding has been initiated.

Considering the fact that once the confiscation proceeding has been initiated, the exercise of discretionary jurisdiction under Article 226 of the Constitution of India, having



self imposed restriction can only be exercised in exceptional or a monstrous situation, such as, when fundamental right is violated, the impugned order or the proceedings are wholly without jurisdiction or where the principle of natural justice has been grossly violated or vires of the Act is under challenge. Considering such view taken by the Apex Court in the case of **State of Karnataka Vs. K. Krishnan (2000) 7 Supreme Court Cases 80** and in the case of **State of West Bengal and Ors. Vs. Sujit Kumar Rana, (2004) 4 Supreme Court Cases 129** and considering the ratio laid down by the Full Bench of this Court in the case of **Baleshwar Roy Vs. The State of Bihar and Ors, 2018(4) PLJR 970**, we are not inclined to pass order for release of the vehicle for the present.

In view of the discussion made above, respondent No.3, District Magistrate-cum-Collector, Rohtas at Sasaram is expected to conclude the proceeding of Confiscation Case No.154 of 2019, within a period of six weeks of receipt or production of the order in accordance with law.

The petitioner is also expected to appear regularly and participate in the confiscation proceeding.

Accordingly, with the above observation and direction, the present writ application is disposed of.



The office is directed to communicate this order to the
District Magistrate, Rohtas at Sasaram for its strict compliance.

(Dinesh Kumar Singh, J)

sanjeev/-

(Anil Kumar Sinha, J)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.03.2020
Transmission Date	NA

