

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.706 of 2020

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Kausal Kumar, Son of Brij Bihari Singh, Resident of Vill-Harnahi, P.S.- Jagdishpur, Dist-Bhojpur.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Excise Department, Govt. of Bihar, Patna.
2. The Commissioner, Patna Division, Patna.
3. The Collector, Bhojpur at Ara, Dist-Bhojpur.
4. The S.H.O. Agion Bazar Police Station, Dist-Bhojpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Rajani Ranjan Pd. Singh

For the Respondent/s : Mr. Prashant Kumar, AC to SC 5

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

and

HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

2 16-01-2020 Heard Mr. Rajani Ranjan Prasad Singh, learned counsel for the petitioner and Mr. Prashant Kumar, learned A.C. to S.C. 5 for the respondents.

The present writ application has been filed for release of Hero Passion Pro motorcycle, bearing Registration No. BR03W-0191, Chassis No. MBLHAS120HHJ00723, Engine No. HA10ACHHJ39249, seized in connection with Agion Bazar Police Station Case No. 142 of 2019, registered for the offences punishable under Section 37 (c) of the Bihar Prohibition and Excise Act, 2016, as amended by 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 :-

“That this writ application is being filed for giving the direction to the Respondent no. 3 (the Collector, Bhojpur) to release the motorcycle of the petitioner being Reg. no. BR03W 0191 Chasis no. - MBLHAS120HHJ00723, which was seized by Respondent no. 4 in Excise Case No. 2091/19, arising out of Agion Bazar P.S. Case No. 142/19 or the offence u/s 37 (c) excise act.”

The factual matrix of the case is that the prosecution case got initiated with written report of Garg Nandan Tripathy, Sub Inspector of Police, Agion Bazar P.S., submitted to S.H.O., Agion Bazar P.S., to the effect that in the evening of 14.10.2019, during patrolling duty, the police personnel saw two persons coming from Suggiwal village on a motorcycle and the driver of the motorcycle was driving the vehicle rashly and when they were stopped, they disclosed their names as Kaushal Kumar and Chhote Lal. It was further found by the Police that they had consumed alcohol and were in intoxicated condition. Further, on search of the vehicle, nothing was recovered. The Police took the two persons to the Primary Health Centre, Piro, for their breath analyzer tests, which was found positive, and accordingly they were arrested and the present case was registered.

It is submitted by learned counsel for the petitioner,



who is the registered owner of the vehicle in question, that it is an admitted position that no liquor or intoxicating material was seized from the vehicle in question and only the driver was found in an intoxicated condition. The vehicle in question is admittedly not used for carrying intoxicated material or liquor, hence the vehicle, in question, is not liable to be confiscated under Section 56 of the Act.

Learned A.C. to S.C. 5 submits that it is admitted position that no liquor or intoxicating material has been seized either from the driver or from the vehicle in question, however, the arrested persons were found in an intoxicated condition and in such circumstances, in view of the ratio laid down in the case of **Diwakar Kumar Singh Vs. The State of Bihar**, reported in **2018 (3) PLJR 403**, he has no objection in the provisional release of the vehicle, in question.

Under Chapter VI of the Act, Section 37 prescribes penalty for consumption of liquor. Section 37 of the Act has been amended by Amendment Act 8 of 2018 which reads as follows:

“37. Penalty for consumption of liquor.

—Whoever, in contravention of this Act or the rules, notification or order made thereunder -

(a) consumes liquor or intoxicant in any



place; or

(b) is found drunk or in a state of drunkenness at any place; or

(c) drinks and creates nuisance or violence at any place including in his own house or premises; or

(d) permits or facilitates drunkenness or allows assembly of drunken elements in his own house or premises;

shall be punishable,

(1) in case of an offence falling under clause (a) and (b), for the first offence only with fine which shall not be less than Fifty thousand rupees or in lieu thereof sentence for a period of three months imprisonment but for subsequent offence falling under clause (a) and (b), shall be punishable with a term which shall not be less than one year but may extend to five years and with fine, which may extend to one lakh rupees.

(2) In case of an offence falling under clause (c) and (d), with a term which shall not be less than five years but which may extend to ten years and with fine, which shall not be less than one lakh rupees which may extend to five lakh rupees.”

Admittedly, there is no recovery of liquor or intoxicant from the vehicle in question. Section 56 (b) of the Act clearly mandates that the vehicle would be liable to



confiscation only when intoxicant or liquor is being carried through it. There is no accusation that liquor was being carried. It is only a case of drunken driving in public place, under Section 37 (b) of the Act. Hence, if the seized vehicle was not liable to confiscation under Section 56(b) of the Act, then there is no requirement of transmitting a report by the seizing officer or detaining officer under Section 58 (1) of the Act to the Collector. Hence, the vehicle is not liable for confiscation.

So far as the petitioner's information goes, no confiscation proceeding has been initiated till date. A Division Bench of this Court, while considering the case of drunken driving in the case of **Diwakar Kumar Singh** (supra), held that it shall be mandatory for the confiscating authority, before passing an order on confiscation proceeding when the person is found in drunken condition and no liquor is seized nor the vehicle is used for transportation of the liquor, to decide it as a preliminary issue whether in such a condition the vehicle is liable for confiscation under Section 56 of the Act. Relevant portion of the order reads as follows:

“.....That apart, in the confiscation proceedings, the confiscating authority shall take note of the provisions of Section 56 of the Bihar Prohibition and Excise Act, 2016 and record a



positive finding after hearing the petitioner as to whether when the petitioner is found or the vehicle is found to be used by a person in drunken condition and no liquor is seized from the vehicle or when the vehicle is not used for transportation of liquor, whether the provision of Section 56 of the Act will apply. It shall be mandatory for the confiscating authority to decide this issue before passing any order on the confiscation proceedings. The confiscating authority shall consider the provision of Section 56 of the Act, apply his mind and pass a speaking order with regard to confiscation initiated. Without deciding the aforesaid issue as a preliminary issue, further proceedings in the confiscation proceedings shall be prohibited.”

Considering the fact that it is admitted position that the confiscation proceeding has not been initiated and the learned counsel for the respondents has conceded for the provisional release of the vehicle in question, we direct that the same be released provisionally till the conclusion of the trial, if any, on the following conditions to the satisfaction of Additional Sessions Judge -cum- Special Judge, Excise, Bhojpur, at Ara:-

(I) The petitioner will produce the proof of valid certificate of registration/ownership in his favour including the insurance papers to the satisfaction of the Additional Sessions



Judge -cum- Special Judge, Excise, Bhojpur, at Ara;

(II) The petitioner will furnish bank guarantee of Rs.50,000/-, with two sureties of the like amount to the satisfaction of the Special Court concerned 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 will be made by the Special Judge within ten days of receipt/production of a copy of this order.

It is made clear that we have not expressed any opinion with regard to the merits of this case or with regard to the ownership of the vehicle in question.

Accordingly, the writ application is allowed to the extent indicated above.

(Dinesh Kumar Singh, J.)

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

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