

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.597 of 2020

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Binay Kumar @ Vinay Kumar S/o Late Motilal Resident of Village- Digha
Ghat, P.s.- Digha, District- Patna

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Excise and Prohibition, Govt. of Bihar, Patna
2. The District Magistrate Saran at Chapra
3. The Superintendent of Police Saran at Chapra
4. The S.H.O. Sonapur, District- Saran

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Jahan Ara
		Md. Ataul Haque
For the Respondent/s	:	Mr.Vikash Kumar (SC11)
		Mr. Akash Chaturvedi, AC to 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 : 14-01-2020

Heard learned counsels for the parties.

The present writ application has been filed for release of Honda Brio car of the petitioner, bearing Registration number BR-01BF 5261, seized in connection with Sonapur P.S. Case No. 281 of 2019, registered under Sections 37(b)(c) of Bihar Prohibition and Excise (Amendment) Act, 2016, as amended by Amendment Act 8 of 2018 (hereinafter referred to as 'the Act'). The relief(s), as stipulated in



paragraph no.1 of the petition, read(s) as follows:-

“1(A) For issuance of an appropriate writ in the nature of Mandamus directing the respondents to release the Car of the petitioner bearing Registration No. BR-01BF-5261, Engine No. 011061, Chassis No.- 100609 brand name Honda which was seized in connection with Sonapur P.S. Case No. 281 of 2019 dated 20.04.2019 instituted for the offences under section 37(b)/(c) of the Bihar Prohibition and Excise Amendment Act, 2016.

(B) For issuance of any other relief/reliefs which may be deemed fit and proper by this Hon'ble Court.”

The prosecution case which got initiated on the basis of written report of Rajesh Kumar Singh, being the A.S.I., of police submitted to the S.H.O., Hariharnath OP, Sonapur Police Station, is to the effect that on 20.4.2019 at 1.00 P.M., during vehicle check, one red coloured car, which was trying to escape after dashing, was intercepted, wherein five persons namely, Gautam Kumar, Navin Kumar, Pintu Kumar, Vikash Ganga and Veeru Kumar were sitting and on conducting breath analyzer test, they were found in intoxicated condition, leading to registration of Sonapur P.S. Case No. 281 of 2019. The petitioner claimed to be the registered owner of the vehicle in question but no document was produced in



support of such claim.

It is submitted by learned counsel for the petitioner that the petitioner is the registered owner of the vehicle in question and the certificate of registration of the vehicle in question has been brought on record as contained in Annexure-1. This is an admitted position that no recovery of liquor or intoxicant was made from the vehicle in question. The seized vehicle is rotting under the open sky. It is further submitted that since there is no recovery from the seized vehicle nor the vehicle was being used for carrying liquor or intoxicant, hence it is not liable for confiscation under the provisions of Section 56 of the Act. It is further submitted that the FIR was lodged and the seizure has been made by ASI of Police, whereas Section 73(e) of the Act clearly mandates that the seizure cannot be made by an officer below the rank of Sub Inspector of Police. Hence, the very seizure appears to be *de hors* the provisions of the Act.

Section 37 of the Act which has been amended by Amendment Act 8 of 2018, prescribes penalty for consumption of liquor. Section 37(b) of the Act prescribes for penalty to any person if he is found drunk or in a state of drunkenness at any place whereas Section 37(c) prescribes penalty if someone



drinks and creates nuisance or violence at any place including in his own house. Section 37 of the Act 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, the petitioner was not found in the vehicle in question at the time of seizure. Hence, no offence under Section 37(b) or 37(c) of the Act is made out against the petitioner.

Section 56(d) 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. Hence, if the seized vehicle was not liable for 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.

So far as the petitioner’s information goes, the confiscation proceeding has not been initiated. A Division Bench of this Court while considering the case of drunken driving in the case of Diwakar Kumar Singh Vs. The State of Bihar and Ors., 2018(3) PLJR 403, held that it shall be mandatory for the confiscating authority to decide it as preliminary issue before passing final order in confiscation proceeding, when the person is found in drunken condition but no liquor is seized nor the vehicle is used for transportation of



the liquor as to 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.”

Learned counsel for the State does not dispute that neither any intoxicant nor liquor has been seized from the vehicle in question nor the same has been used for carrying liquor or intoxicant. Hence, prima facie, it is not liable for confiscation under Section 56 of the Act.

Since it is admitted position that the confiscation proceeding has not been initiated, moreover, more than two lakh cases have been registered in the State of Bihar under the Act in question, there is no likelihood of the trial being concluded in near future. However, learned counsel for the respondents has no objection with regard to the provisional release of the vehicle in question, we direct that the same be released provisionally till the conclusion of the trial on the following conditions to the satisfaction of ADJ II-cum-Special Judge(Excise), Saran:

(I) The petitioner will produce the proof of valid certificate of registration/ownership in his favour including the insurance papers of the vehicle in question before the A.D.J.-I-cum-Special Judge, Excise, Saran;

(II) The petitioner will furnish bank guarantee of rupees fifty thousand, 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 done by the court below 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 though we have noticed this fact that seizure has been made by the ASI which is contrary to the provisions of Section 73(e) of the Act which prohibits the seizure by any police officer below the rank of Sub Inspector of Police.

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

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

