

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.190 of 2020

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Jai Shankar Ram Akela, Male, Aged about 64 years, Son of Jhakkar Ram,
Resident of Village - Baswaria, New Colony, Ward No. 31, P.O.-Bettiah,
Police Station- Bettiah Town, District-West Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Excise Commissioner, Bihar, Patna.
2. The Excise Commissioner, Bihar, Patna.
3. The Collector, West Champaran, Bettiah.
4. The Excise Superintendent, West Champaran, Bettiah.
5. The Sub-Inspector of Excise, Striking Force (Prahar Bal), West Champaran, Bettiah.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Arbind Kumar Singh
For the Respondent/s : Ms. Runa, AC to 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 : 04-02-2020

Heard Mr. Arbind Kumar Singh, learned counsel for the
petitioner and Ms. Runa, learned AC to GP – 7.

The present writ application has been filed for release of
T.V.S. Apache motorcycle bearing registration no. BR-05T6257
seized in connection with West Champaran Excise Case No. 84 of
2019 registered for the offences punishable under Sections 30(a)
and 32(2) 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 - 1 of the writ petition reads as follows:-

“i. For issuance of a writ in the nature of Mandamus or any other appropriate writ, order or direction, directing the respondents to release the T.V.S. Apache Motorcycle bearing registration No. BR-05T6257, which has been seized in connection with West Champaran Excise Case No. 84/2019 registered for the offence under sections 30(a) and 32(2) of Bihar Prohibition and Excise Act 2018 and the same is lying in District Excise Office Campus under open sky and is destroying day by day.

ii. For issuance of any other relief or reliefs to which the petitioner is found entitled to.”

The prosecution case is that 09 liters of Indian Made Foreign Liquor were recovered from the motorcycle of the petitioner whereas other recoveries have been made from one another motorcycle and two cars.

It is submitted by learned counsel for the petitioner that petitioner is the registered owner of the vehicle in question and statement to that effect has been made in paragraph no. 4 of the writ petition. The certificate of registration of the vehicle in



question has been brought on record as Annexure -1 to the petition. The vehicle is rotting under the open sky and keeping the vehicle in such condition and allowing it to reduce into a junk would ultimately result into waste of public money. Petitioner is ready to produce the vehicle in question as and when required by the court below or confiscation authority. The confiscation proceeding has been initiated after seeking adjournment from this court vide order 13.01.2020.

It is submitted by learned AC to GP- 7 that in spite of our best efforts instruction has not been received for filing counter affidavit. However, a telephonic message has been received that Confiscation Case No. 731 of 2019-20 has already been initiated after receiving of the report under Section 58(1) of the Act on 31st August, 2019 and the next date fixed in the confiscation proceeding is 17th February, 2020. Hence, it cannot be said that confiscation proceeding has been initiated after taking adjournment from this court.

Having considered the rival submissions of the parties we are of the considered opinion that once the confiscation proceeding has been initiated then in view of the ratio laid down by Full Bench of this Court in the case of Baleshwar Roy and Ors. Vs. The State of Bihar and Ors., reported in 2018 (4) PLJR 970



wherein it has been held that on initiation of confiscation proceeding this Court cannot interfere and exercise jurisdiction under Article 226 of the Constitution of India except in monstrous situations and circumstances when injustice occurs because of non-fulfillment of the conditions for confiscation. Paragraph nos. 62 to 66 of the said judgment read 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 Statute 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.



Since confiscation proceeding has already been initiated we are not inclined to interfere at this stage. However, it is expected from the respondent no. 3 i.e. Collector, West Champaran, Bettiah to conclude the proceedings in Confiscation Case No. 731 of 2019-20 expeditiously, preferably within a period of six weeks from the date of receipt / production of a copy of this order in accordance with law after giving due opportunity of hearing to all the affected persons / parties. It is also expected that petitioner shall participate in the confiscation proceedings regularly.

If the confiscation proceeding is not concluded within the said period without any laches on the part of the petitioner, the petitioner shall be at liberty to move this court for the release of the vehicle in question.

Accordingly, the writ petition is disposed of.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

praful/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18-03-2020
Transmission Date	NA

