

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.640 of 2020

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Mayush Kumar Singh S/o Nandlal Singh Resident of at Pakri, P.O.-
Kalyanpur, P.S.-Bihia, District-Bhojpur at Ara.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary Excise Deptt., Bihar at Patna.
2. The District Magistrate, Katihar.
3. The Superintendant of Police (City), Katihar.
4. The S.H.O. Police Station--Town (Sahayak), District-Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Sanchay Srivastava, Adv.
For the Respondent/s : Mr.Vivek Prasad, GP-7

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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 : 16-01-2020

Heard Mr. Saurabh Suman, learned counsel for the
petitioner and Mr. B. R. P. Sinha, learned A.C. to learned G.P.-7
for the respondent -State.

The present writ application has been filed for
release of TVS Apache motorcycle of the petitioner, bearing
Registration number BR39AA4380, seized in connection with



Sahayak Nagar P.S. Case No. 719 of 2019, registered under Section 37(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:-

“I. That the present writ application is being filed for issuance of an appropriate writ order/direction(s) in the nature of Mandamus for a direction to the concerned respondents authorities to release the vehicle (Motorcycle) of the petitioner bearing Registration No. BR-39-AA-4380, Chassis No.-MD637AE78K2AM5792, Engine No. -AE7AK26M5829 in favour of the petitioner which was seized in connection with Sahayak Nagar P.S. Case No. 719 of 2019 dated 29.10.2019 instituted under Sections 37(c) of the Bihar Prohibition and Excise Act, 2016.

II. That the present writ application is being filed for issuance of an appropriate writ order/direction(s) in the nature of *mandamus* or any other appropriate writ to direct the concerned respondent authorities to release the aforesaid vehicle belonging to the petitioner in favour of the petitioner immediately as it is causing irreparable damage to the petitioner who is directly affected due to seizure of the aforesaid vehicle;

III. And for issuance of any other relief or relief(s) for which the petitioner is entitled for.”

The prosecution case which got initiated on the



basis of written report of Nawal Kumar, being the A.S.I., of police submitted to the S.H.O., Sahayak Police Station, Katihar is to the effect that during patrolling, the informant found a person with a TVS Apache vehicle without having registration number, creating nuisance and who was apprehended. Thereafter, the breath analyzer test was conducted in which he was found consumed 206.5 mg/10 ml of liquor, leading to registration of Sonepur P.S. Case No. 737 of 2019.

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 has been brought on record as Annexure-3. This is an admitted position that no recovery of liquor or intoxicant was made from the vehicle in question. The seized vehicle in question is rotting under the open sky. It is further submitted that since there is no recovery and the vehicle in question has not been 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 seizure has been made by ASI of Police, whereas Section 73(e) of the Act stipulates 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(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.”

Section 56(b) of the Act clearly mandates that the vehicle would be liable to confiscation only when intoxicant or liquor is carried through it. There is no accusation that liquor was being carried. 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, 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 neither liquor has been seized nor the vehicle has been used for transportation of the liquor then 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 any such prohibited article. 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, there is no likelihood of the trial being concluded in near future, moreover, 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 learned A.D.J.-cum-Special Judge (Excise), Katihar:

(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.-cum-Special Judge, Excise, Katihar;

(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 Collector, Katihar 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, particularly in view of the fact, the registration certification reflects the date of registration of the vehicle in question is 10.04.2019, whereas, the present FIR was lodged on 29.10.2019 though we have noticed this fact that seizure has been made by an Assistant Sub-



Inspector of Police 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)

Ashwini/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.01.2020
Transmission Date	NA

