

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.310 of 2020

Abhinay Kumar Son of Keshav Prasad Singh resident of Village- Sishwa Chak, P.S.-Punpun, District-Patna

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise Department, Governemnt of Bihar, Patna.
2. The District Magistrate, Patna.
3. The Superintendent of Police, Patna
4. The Officer Incharge, Police Station-Mashaurhi, District-Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Anil Kumar

For the Respondent/s : Mr.Vikash Kumar (SC 11)

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 learned counsels for the parties.

The present writ application has been filed for release of Maruti Alto Car of the petitioner bearing Registration No. BR01AR 9899, which has been seized in connection with Mashaurhi P.S. Case No. 853 of 2019, registered for the offence under Section 30(a) of the Bihar Prohibition and Excise Act, 2016, as amended by Amendment Act 8 of 2018, (hereinafter referred to as 'the Act'). The prayer as is contained in paragraph no.1 of the writ application, reads as follows:-

“(i) For issuance of a writ in the nature of mandamus directing and commanding the respondents to release the Maruti Alto Car bearing Registration No. BR01AR 9899 of the



petitioenr which has been seized in Mashaurhi P.S.Case No. 853 of 2019 dated 29.11.2019 instituted under section 30(a) of the Bihar Prohibition and Excise Act, 2016.”

(ii) To grant any other relief/reliefs, order/orders for which petitioners are entitled under law as well as on fact.”

The prosecution case, initiated as per the written report of Prabhu Nath Ram, S.I. of Police, Mashaurhi Police Statio submitted to the SHO, Mashaurhi Police Station, is to the effect that on 28.11.2019 at 11.35 P.M., the informant during patrolling received a secret information that some persons are consuming liquor sitting in a Maruti Car, whereupon after constituting a raiding team, he proceeded but as soon as the raiding team reached at the relevant place, the persons sitting in the vehicle in question escaped from the scene but on search being made, 2.250 litres Indian Made Foreign liquor was recovered from the vehicle in question, leading to registration of Mashaurhi P.S. Case No. 853 of 2019.

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 same



has been brought on record as Annexure-2. It is further submitted that the vehicle in question is rotting under the open sky and till date confiscation proceeding has not been initiated.

Mr. Revati Raman, learned AC to SC 11 made submission on the basis of counter affidavit filed on behalf of respondent nos. 3 and 4, the S.P., Patna and the Officer-in-charge, Mashaurhi Police Station, respectively that the liquor has been recovered from the vehicle of the petitioner and it is liable for confiscation. However, he admits that only proposal has been transmitted by the IO to the District Magistrate. Statement to that effect has been made in paragraph 8 of the counter affidavit, which reads as follows:

“That, it is stated and submitted that since prohibited liquor has been recovered from Maruti Alto car vehicle bearing registration no. BR01AR9899 of the petitioner, therefore the IO of this case has sent proposal for confiscation of vehicle in question vide P.S. memo no.3152/19 dated 30.12.19 to D.M. Patna through proper channel.”

Having heard learned counsels for the parties and considering their rival submissions, we are constrained to observe that in spite of the fact that the writ petition was



registered on 7.1.2020, after serving copy of the writ petition upon the respondents but since no counter affidavit was filed, the matter was adjourned on the prayer of learned AC to SC 11 vide order dated 13.01.2020 to 27.1.2020. On the last occasion, the matter was passed over.

From the counter affidavit, particularly, paragraph 8 thereof, it appears that only proposal has been transmitted to the District Magistrate for initiation of confiscation proceeding with regard to the vehicle in question and that too, by the I.O., which is contrary to the provision contained in Section 58(1) of the Act, which mandates transmitting the report by the seizing/detaining authority. Learned counsel for the State submits that till date, the confiscation proceeding has not been initiated. Hence, prays for disposal of the writ application.

In the circumstances, in our considered view, no useful purpose will be served allowing the vehicle to reduce to junk only for the purpose of being produced as material evidence during trial, particularly in view of the fact that the trial, if any is not likely to commence in near future in view of the pendency of two lakh cases having been registered in the State of Bihar under the provisions of the Excise Act.



Keeping the vehicle in such condition and allowing to reduce it into junk, would ultimately result into waste of public money has been deprecated by the Supreme Court in the case of Sunderbhai Ambalal Desai Vs. State of Gujrat and other analogous cases (2002) 10 SCC 283 and in the case of General Insurance Council and Ors. Vs. State of Andhara Pradesh and Ors. (2010) 6 Supreme Court Cases 768. We, accordingly, direct that the same be released till the conclusion of the trial, if any, on the following conditions to the satisfaction of learned Additional District and Sessions Judge-cum-Special Judge (Excise), Patna or in the meantime if the confiscation proceeding is initiated, to satisfaction of Collector, Patna:

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

(II) The petitioner will furnish surety bond of Rs. 100000/- but not in the form of bank guarantee or cash, with two sureties of the like amount to the satisfaction of the A.D.J.-cum-Special Judge, Excise, Patna 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, if any or trial;

(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 learned 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.

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

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

anil/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

