

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.242 of 2020

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Rajesh Kumar Giri Son of Mukesh Giri, aged about 27 years, (Male), resident of Village:- Musapur, P.O.- Musapur, P.S.- Ghataho, Dist- Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar, through Excise Commissioner, Patna.
2. The Collector-cum-District Magistrate, Samastipur.
3. The Superintendent of Police, Samastipur.
4. The Excise Superintendent, Samastipur.
5. The Officer-in-charge of Halai O.P. of Tajpur Halai Police Station, District-Samastipur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mahesh Narayan Parbat, Sr. Advocate

For the Respondent/s : Mr. Rewati Kant Raman, AC to -SC11

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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. Mahesh Narayan Parbat, learned senior counsel for the petitioner and Mr. Rewati Kant Raman, learned AC to SC- 11.

The present writ application has been filed for release of Hero Splendor Plus motorcycle bearing registration no. BR-33AG-7678 seized in connection with Tajpur Halai P.S. Case No. 174 of 2019 registered for offences punishable under Section 30(a) 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). To issue a writ of mandamus commanding the respondents to discharge their legal obligation to release the seized Hero Splendor Plus Motorcycle bearing registration no. BR-33AG-7678 having Chassis no. MBLHAW09-XKHD62491, Engine no. HA10AGKHDA8-827, of petitioner in his favour, which has been seized for alleged recovery of total 6.75 litter wine in Tajpur Halai P.S. Case No. 174 of 2019 (A.S. Case No. 14 of 2019) (State Versus, Mohan Giri and other) arising out of GR no. 720 of 2019, under section 30(a) of Bihar Prohibition and Excise Act, 2016 and confiscation proceeding of vehicle of petitioner has not been started yet as he has not been served any notice in this regard.

ii. To any other relief or relief's for which the petitioner may be found entitle.”

The prosecution case as per the self statement of Mr. Sandeep Kumar, S.I. of Police -cum- S.H.O. Tajpur Halai P.S. recorded on 18.06.2019 at 7.00 P.M. is to the effect that on



18.06.2019 at 8.05 A.M., during the course of patrolling, two persons travelling on a motorcycle were intercepted and from their possession, 18 bottles of 375 ml each of Indian Made Foreign Liquor was recovered and consequently Tajpur Halai P.S. Case No. 174 of 2019 was registered on 18.06.2019.

It is submitted by learned senior counsel for the petitioner that petitioner is the owner of the vehicle in question. The vehicle is rotting in 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 and petitioner is ready to produce the vehicle in question as and when the court or before the confiscation authority as and when required. He further submits that the petitioner has not received any notice with regard to initiation of confiscation proceeding.

However, Mr. Rewati Kant Raman, learned AC to SC – 11 submits that the Confiscation Case No. 401 of 2019 has already been initiated and notices have been issued on 20.08.2019 to the petitioner and since the liquor has been recovered from the vehicle in question hence, it is liable for confiscation proceeding under Section 56(b) of the Act.

The matter was adjourned vide order dated 13.01.2020 for 20.01.2020 to enable learned AC to SC- 11 to seek instruction



and file counter affidavit, but the same has not been filed in spite of the matter being passed on the last several occasions.

Considering the fact that confiscation proceeding has already been initiated and in view of the ratio laid down by the 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.

Moreover, the application for release of the motorcycle seized under the provisions of Excise Act was not maintainable before the learned court below.

Considering the rival submissions of the parties, since the confiscation proceeding has been initiated in the year 2019 itself, we are not inclined to direct for the release of the vehicle in



question. Hence, we are not inclined to interfere at this stage. However, it is expected from the petitioner to appear regularly in the aforementioned confiscation proceeding. It is further expected from the respondent no. 2 i.e. Collector -cum- District Magistrate, Samastipur to conclude the proceedings of Confiscation Case No. 401 of 2019 expeditiously, preferably within a period of six weeks from the date 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.

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

Accordingly, writ petition is disposed of.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

praful/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17-03-2020
Transmission Date	NA

