IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17119 of 2021

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Md. Nazibullah S/o Md. Nurullah R/o- Vill./Mohalla- Near Ram Janki Temple, Milan Chauk, Urdu Road, P.O.- Lal Bagh, P.S.- Darbhanga (Town), Distt.- Darbhanga.

... ... Petitioner/s

Versus

1. The State of Bihar Through Principal Secretary, Excise Department, Govt. of Bihar, Patna.
2. The Additional Chief Secretary Govt. of Bihar, Patna.
3. The Commissioner Excise Bihar, Patna.
4. The Collector cum District Magistrate Darbhanga.
5. The S.P. Excise Department Darbhanga.
6. The Senior Superintendent of Police Darbhanga.
7. The Inspector, Akhilesh Kumar Police Inspector cum S.H.O., P.S.- Bahadurpur, Dist.- Darbhanga.
8. The Mahindra and Mahindra Financial Service Ltd. Through its Branch Manager, First Floor, C/o Rajendra Mahto, Raj Laxmi Bhawan, Maula Ganj, Distt.- Darbhanga.
9. Shaba Karim S/o Md. Kalim R/o Vill.- Khajasarai, P.S.- Laheriasarai, Distt.- Darbhanga.
10. Rohit Sahni S/o Prayag Sahni R/o Vill.- Ekmighat Navtolia, P.S.- Bahadurpur, Distt.- Darbhanga.
11. Vikam Das S/o Late Jagdish Das R/o Vill.- Saidnagar, P.S.- Laheriasarai, Distt.- Darbhanga.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Kedar Jha, Adv
For the Respondent/s	:	Mr. Lalit Kishore (AG)

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT
(Per:HONOURABLE MR. JUSTICE S. KUMAR)

Date : 10-12-2021

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s):-

"(i)For issuance of a writ in the nature of certiorari for setting aside the order dated 20.07.2021 passed by the learned Additional Chief Secretary, Bihar, Patna, in Excise Revision No. 32/2021 whereby and where under the Excise Revision filed by the petitioner was illegally and arbitrary rejected by holding the order dated 24.11.2020 passed by the learned District Collector, Darbhanga, in Excise Confiscation Case No. 183/2020 and appellate order dated 05.02.2021 passed by the learned Excise Commissioner in Excise Appeal case no. 05/2021 do not suffer from any illegality. Further for setting aside the appellate order dated 05.02.2021 passed by the learned Excise Commissioner in Excise Appeal Case No. 05/2021 as well as order dated 24.11.2020 passed by the learned District Collector, Darbhanga, in Excise Confiscation case No. 183/2020 because without following the safe guard of procedural law of civil nature in confiscation case redressed the issue in mechanical and perfunctory manner not issuing notice to the necessary and proper party of the case and without examination of least witnesses of the seizure list on record and without considered the other materials and persons concerned of the case confiscated the vehicle of the petitioner, with a prayer to set aside the aforesaid order for the ends of justice.

(ii) For issuance of direction up to the respondent no. 4 releasing the vehicle Mahindra SUV500 bearing registration no. BR07PB8997 having Chassis no.

MA1YU2WTUK6C17331 engine no. WTK4C14152."

Briefly stated, the facts of the case is that informant who is a police officer has alleged in his FIR that on receiving secret information on 04.06.2020 that a Truck loaded with illicit liquor is parked near a Line Hotel and besides which a four wheeler is also parked and on receiving said information he along with other police personnel reached said place and on seeing the police force, miscreants assembled there tried to flee away, however, three miscreants were apprehended and remaining managed to escape and from Truck 585 litre of illicit foreign liquor and from Mahindra SUV500 90 litre of illicit foreign liquor were recovered and thereafter Truck and SUV as well as illicit foreign liquor were seized giving rise to Bahadurpur P.S. Case No. 236 of 2020 dated 04.06.2020 under section 30(a) and 41(i) of Bihar Prohibition and Excise Act, 2016.

Notice of confiscation was issued to petitioner being the owner of the SUV500 by the Confiscating Authority cum District Magistrate, Darbhanga, in which show cause was filed by the petitioner in which defence was taken that he operates his vehicle for commercial purpose and driver Saba Karim had taken the vehicle which was hired on payment for marriage purpose, however, his vehicle was misused, from which 90 litres of illicit foreign liquor was recovered. Petitioner has no concern with the recovered liquor.

The learned Collector-cum-confiscating Authority, Darbhanga has held that as 90 litres of illicit foreign liquor was recovered from the petitioner's vehicle, as such, same is liable for confiscation under Section 56 of the Excise Act. It has been further held by the learned Collector-com-Confiscating Authority that petitioner has not led any evidence to discharge his onus as contemplated under Section 32(3) of the Excise Act, as there is presumption that if there is any recovery of illicit liquor from the vehicle, it will be presumed that an offence under Excise Act has been committed and vehicle becomes liable for confiscation. Onus lies upon the owner of the vehicle from where illicit liquor has been recovered to dispel such presumption by satisfactory explanation.

Section 32 of the Bihar Prohibition and Excise Act reads as follows:-

> "**[32. Presumption as to commission of offence in certain cases.-**(1) In prosecution of an offence under this Act, the accused person would have to account for the possession of any liquor, intoxicant, material, utensil, implement or apparatus involved in manufacture or storage of such liquor.
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> (2) In the event of a failure to offer a satisfactory explanation, there shall be a

> presumption that the accused person is guilty of the commission of such offence, unless proved otherwise.
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> (3) Where any equipment, machinery, animal, vessel, cart, vehicle, conveyance or any premises are used in the commission of an offence under this Act, and are liable to confiscation and/or liable to be sealed, the owner or occupier thereof would need to account satisfactorily, and in the absence of a satisfactory explanation the presumption that accused person committed the offence shall arise, unless proved otherwise.]"

The procedure to be followed by the Confiscating Authority has been enumerated under rule 13 of Bihar Prohibition and Excise Rules, 2021 which reads as follows:-

> "13.(A) Seizure of animal/vehicle/vessel/other conveyance.- (i) On interception and search, if an officer within the meaning of Section 73 of the Act finds that any animal, vehicle, vessel or other conveyance is being used for carrying any intoxicant or liquor, then the same shall be seized and forwarded to the nearest police station/Excise Office within whose jurisdiction the seizure has been affected along with seizure list for institution of case.
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> (ii) Upon institution of the case, the proposal for confiscation of animal/vehicle/vessel/other conveyance shall be sent to the Collector along with due verification report of the District Transport Officer or any authority authorized for the purpose of registration of the conveyance and the report of chemical examination within 30 days of seizure. In case of delay in submission of the proposal for confiscation, the police/Excise Officer will have to explain the delay.

(B) Confiscation of Vehicles, Vessels or other Conveyance.- (i) The Collector, on receipt of proposal for confiscation of any vehicle(s) or other conveyance from Police Officer/Excise Officer, shall issue show cause notice to owner of the said vehicle or the vessel or other conveyance.

(ii) Such notice issued by the Collector shall be served as per procedure prescribed in the Code of Criminal Procedure, 1973 for service of summons.

(iii) the Collector shall provide reasonable opportunity of hearing to the owner. The Investigating Officer/Inquiry Officer shall also be given opportunity to participate in such hearing.

(iv) If, on the date fixed for hearing, the person(s) to whom the notice has validly been served fail(s) to appear in the proceeding on two consecutive dates fixed for hearing, the confiscating authority shall proceed to pass the order *ex-parte.*

(v) The Collector, after hearing the parties, on satisfaction that an offence has been committed in terms of the Act, shall pass appropriate order with respect to seized vehicle or vessel or conveyance as the case may be.

(vi) Any person aggrieved by the order passed by the Collector under the provisions of the Act may file appeal in the manner prescribed under these Rules."

There is is presumption against the persons of committing offence under the Excise Act, once from their possession, illicit liquor is recovered and the vehicle also becomes liable for confiscation, under Section 32 (3) of Excise

Act. Onus lies upon the owner of the vehicle to account for satisfactorily explanation in absence of which, the vehicle is liable to be confiscated. However, petitioner has not led any evidence to discharge such onus, as such, presumption will be that the vehicle was being used for transportation of illicit liquor and liable for confiscation.

It is settled preposition of law that the words of the statute are clear, simple and unambiguous, the courts are bound to give effect to that meaning irrespective of its consequences and the court is required to explain those words in its natural and ordinary sense.

Ordinarily, whoever seeks reliefs from a confiscating authority on existence of a particular fact, such person has to prove that fact but the legislator in its wisdom, can alter this Rule and put on the other person the onus to prove such fact.

In present case, when the legislator has cast onus on the owner to satisfy certain requirements to avoid confiscation, the court cannot substitute its opinion, according to its own motion of justice. In present case, the owner or occupier thereof would need to account satisfactorily, and in the absence of a satisfactory explanation, the presumption that accused persons committed the offence shall arise, unless proved otherwise.

In present case, the vehicle in question was parked by the side of the truck, upon which, huge quantity of illicit liquor was loaded and same was being unloaded in the vehicle in question and, as such, the explanation of petitioner that the vehicle was a commercial vehicle and was given for marriage purpose is not acceptable and was rightly disbelieved by the confiscating authorities.

Having heard learned counsel for the parties and considering the material available on record, we don't find any error or infirmity in the order passed by the confiscating authorities.

Accordingly, the writ petition is dismissed.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.01.2022
Transmission Date	NA