IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18366 of 2021

==

Shashi Kumar Son of Brijnadan Prasad, Resident of near Surya Mill, Railway Colony, Mirzapur Nohta, P.S. - Fatuha, District - Patna.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Registration, Excise and Prohibition, Government of Bihar, Patna.
2. The Additional Chief Secretary, Excise, Government of Bihar, Patna.
3. The Commissioner, Excise, Government of Bihar, Patna.
4. The District Magistrate - Cum - Collector, Patna.
5. The Superintendent of Police, Patna.
6. The Officer - in - Charge of Fatuha Police Station, Patna.

... ... Respondent/s

==

Appearance :

For the Petitioner/s : Mr.Amit Kumar Anand, Advocate

For the Respondent/s : Mr.Kumar Manish (Sc5)

==

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

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

Date : 17-12-2021

Heard learned counsel for the parties.

Petitioner has prayed for following relief:-

> **"**For setting aside the order dated 05.08.2021 (Annexure 6) passed by the learned Additional Chief Secretary, Bihar, Patna (Respondent no.2) in Excise Revision No.63 of 2021 and also order dated 12.04.2021 (Annexure 5) passed by the learned Commissioner Excise, Government of Bihar, Patna (respondent no.3) in connection with Excise Appeal No.241 of 2021 and also setting aside the order dated 04.01.2021(Annexure-4) passed by the learned District Magistrate-cum-Collector, Purnea in Confiscation Case No.1172 of 2020-21 whereby and whereunder the learned District Magistrate-cum-Collector, Patna (respondent no.4) has confiscate the Two wheeler Hero Maestro Edge Scouty bearing registration Number BR01DZ/7962, which have been illegally and deliberately seized by the Fatuha police pursuant to Fatuha P.S. Case No.179 of 2019

> dated – 17.03.2021 registered punishable offence under Section 30(a) of the Bihar Prohibition of Excise Act 2016, it is also prayed that issuance of mandamus directing and commanding the respondent authorities to release the two wheeler Hero Maestro Edge Scouty bearing Registration Number BR01DZ/7962 in favour of the petitioner and the petitioner also prays for any other relief or reliefs for which he is legally entitled to, on the peculiar facts and circumstances stated in this petition."

It is submitted on behalf of learned counsel for the petitioner that he has exhausted all the remedies provided under the Excise Act against the order passed by the confiscating authority and said order being upheld by the appellate authority and revisional authority.

It is an admitted fact that from vehicle of petitioner, 750 ml. of foreign liquor was recovered and the vehicle was being driven by the accused Gautam Kumar who is brother of petitioner and, thereafter, the illicit liquor and motorcycle was seized by the police and Gautam Kumar was apprehended giving rise to Fatuha P.S. Case No.179 of 2019 dated – 17.03.2021 registered punishable offence under Section 30(a) of the Bihar Prohibition of Excise Act 2016.

On the recommendation made by the police, a confiscation case being confiscation case no. 1172 of 2021 was initiated against the vehicle of petitioner in which final order dated 4.1.2021 (Annexure 4) was passed by the confiscating authority, Patna by which, the vehicle of the petitioner was directed to be confiscated. The confiscating authority has held that in spite of granting several opportunities, petitioner did not produce any evidence in support of his defence that the vehicle of the petitioner was not used for transportation of illicit liquor and accordingly, passed the order to confiscate the vehicle of the petitioner. Appeal and revision preferred by petitioner were also dismissed and thereafter, petitioner has assailed the order passed by the confiscating authorities by filing this writ petition.

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.
>
> (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.
>
> (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."

As there is presumption against the accused of committing offence under the Excise Act, once from his possession, illicit liquor has been recovered and the vehicle becomes liable for confiscation and exception of which is provided under Section 32 (3) of Excise Act.

Onus lies on the petitioner to establish, as mandated under Section 32(3) of the Excise Act, that the liquor which was recovered from the vehicle, there was no connivance of petitioner with respect to transportation of illicit liquor from his vehicle and he had no knowledge or information about it. However, petitioner has not led any evidence to discharge such onus, as such, presumption will be that the vehicle was being used for transpiration of illicit liquor and liable for confiscation.

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 confiscating the vehicle of petitioner.

Accordingly, the writ petition is dismissed.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.12.2021
Transmission Date	NA