IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18322 of 2021

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Pradeep Kumar Singh @ Pradeep Singh, son of Subedar Singh, Resident of Villae-Pirautha, P.O.-Ramchandra Nagar, P.S.-Fesar, District-Aurangabad.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Excise and Prohibition and Registration Department, Govt. of Bihar, Patna.
2. The Addl. Chief Secretary, Bihar Prohibition and Excise.
3. The Excise Commissioner, Govt. of Bihar, Patna.
4. The District Magistrate-cum-Collector, Gaya.
5. The Superintendent of Police, Gaya.
6. The Officer in Charge, Police Station, Aamas, District-Gaya.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Vijaya Laxmi Srivastawa, Advocate

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

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 23-12-2021

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s).

> "1. For issuance of writ in the nature of certiorari quashing the order dated 31.08.2021 passed in Excise Revision No.-109/2021 issued by the Secretary, Bihar Prohibition and Excise Department, Patna, whereby and whereunder the Learned Secretary has rejected the revision application filed by the petitioner, which is illegal, arbitrary, and not sustainable in the ye of law."
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> ii. For issuance of writ in the nature of certiorari for quashing the order dated

> 21.01.2020 passed by the District Magistrate, Gaya in Confiscation Case No.-229/2019, by which the District Magistrate has been pleased to confiscate the pick-up van vide Registration No.-BR 02 W-8872.
> iii. For issuance of any other relief or reliefs for which the petitioner is found entitled in the facts and circumstances of the case."

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 Pickup van of petitioner, 35 liters of illicit liquor was recovered and, thereafter, the illicit liquor and vehicle was seized by the police giving rise to Amas P.S. Case No.194/16 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. 229/ 2019 was initiated against the vehicle of petitioner in which final order dated 19.1.2021 (Annexure 5) 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)

Rajiv/veena-

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