IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19060 of 2021

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Rahamat Ali Son of- Akher Ali Mistri Resident of- Algaria, P.S.- Noapara, District- North 24 Paraganas, West Bengal, 743700.

... ... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Principal Secretary, Excise and Prohibition Department, Govt. of Bihar, Patna.
3. The Excise Commissioner, Excise and Prohibition Department, Govt. of Bihar, Patna.
4. The District Magistrate, Purnia.
5. The Superintendent of Police, Purnia.
6. The S.H.O., Baisi Police Station, Purnia.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Avinash Kumar Singh, Advocate
For the Respondent/s	:	Mr.Vikash Kumar (Sc11)

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 following relief:-

(I) For issuance of appropriate writ/writs, order/orders direction/directions to the respondent authorities to release the vehicle (Ashok Leyland Truck) of the petitioner bearing registration No WB25G-5523, Chassis no MB1A2GAD3HRGR8051, and Engine No. GTHZ438875 in favor of petitioner which has been seized in connection withBaisi P.S Case no 238/2019dated 05.102019 u/s 30(a)/33/41/47 of Bihar Prohibition and Excise (Amendment) Act, 2016. and

(II) For quashing the order dated 24/08/2021 in Excise Revision case no 88/2021 passed by the Learned Additional Chief Secretary, Excise, Patna whereby and whereunder the order dated 18/06/2021 passed in Excise Appeal case no 347/2021 by the Learned Excise Commissioner, Patnahas been affirmed and petitioner's Truck bearing registration No WB 25 G- 5523, Chassis No MB1A2GAD3HRGR8051, and Engine No. GTHZ438875 has been directed to be confiscated. And

(III) Further for quashing the order dated 18/06/2021 passed in Excise Appeal case no 347/2021 by the Excise Commissioner, Patna whereby and whereunder the order dated 13.03.2020 passed by District Magistrate, Purnia in Confiscation case no. 09 of 2020 has been affirmed and the confiscation of the aforementioned truck of the petitioner has been directed.and

(IV) For quashing the order dated 13/03/2020 passed by District Magistrate ,Purniain Excise Confiscation case no. 09 of 2020 whereby and whereunder the aforesaid vehicle has been ordered to be confiscatedin connection with Baisi Police in Case no 238/2019 registered for offence under Section

30(a)/33/41/47 of Bihar Prohibition and Excise (Amendment) Act, 2016.and

(V) For restraining the Respondent from putting the Vehicle in question for public auction during pendency of present writ petition.And/or

(VI) for any other relief or reliefs to which the petitioner may be found entitled to in course of hearing of this writ application.

Briefly stated the facts of the case is that informant is a police officer of Baisi Police Station who lodged a written complaint alleging therein that on 05.10.2019 at 6.30 p.m., he along with other police personnel intercepted the Truck in question and on search, 40 drums of spirit (intoxicant), each containing 200 litres was recovered from the aforesaid truck and thereafter the truck and spirit were seized and the driver and cleaner were apprehended giving rise to Baisi PS Case No.238 of 2019 instituted under Sections 30(a), 33, 41 and 47 of the Bihar Prohibition and Excise Act, 2016 and Sections 272 and 273 of Indian Penal Code.

The sample collected of the seized commodity was sent to Excise Chemical Examiner who in his report dated 15.10.2019 found it to be denature spirit which comes within the definition of intoxicant.

As huge quantity of spirit (intoxicant) was recovered from the vehicle, as such, vehicle became liable for confiscation under Section 56 of the Excise Act. On the recommendation made by the police, a confiscation case being confiscation case no. 09/ 2020 was initiated against the vehicle of petitioner in which final order dated 13.03.2020 (Annexure 3) was passed by the District Magistrate-cum-confiscating authority, Purnia by which, the vehicle of the petitioner was directed to be confiscated.

The confiscating authority has held that the explanation given by petitioner that driver and cleaner were transporting said huge quantity intoxicant without his knowledge and information is not convincing.

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.
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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.

> (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.
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> (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.
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> (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.
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> (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.*
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> (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 presumption against the persons of committing offence under the Excise Act, once from their possession, illicit liquor/ spirit 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 failed to discharge such onus, as such, presumption will be that the vehicle was being used for transportation of illicit liquor / spirit 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.

There is presumption under Section 114 (e) of Evidence Act that official duty were regularly performed. The presumption is rebuttable. Initial burden lies upon the prosecution and only when it stands satisfied, the legal burden shifts on otherside. Provisions of Evidence Act is not applicable in confiscating proceeding.

The moment an allegation is made and the FIR recites compliance with statutory procedure of search and seizure leading to recovery and preparation of seizure memo and submission of report of chemical analyst about seized commodity to be intoxicant, the initial burden of proof stands satisfied and burden of proof shifts to the accused without the prosecution to establish or prove anything more. Excise Act carries a reverse burden of proof.

As there is presumption against the persons of committing offence under the Excise Act, once from their possession, illicit liquor is recovered and the vehicle becomes liable for confiscation and exception of which is carved out under Section 32 (3) of Excise Act.

Onus lies on the petitioner to establish, as contemplated under Section 32(3) of the Excise Act, that the liquor/ spirit which was recovered from his vehicle, was not within his knowledge and information. There was no connivance of petitioner with respect to transportation of spirit (intoxicant) from his vehicle. However, the explanation given by the petitioner was not found satisfactory and reliable to the satisfaction of confiscating authority.

Petitioner has failed to discharge his onus, as such, presumption will be that the vehicle was being used for transportation of spirit (intoxicant) with his consent and within his knowledge and as such 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	19.01.2022
Transmission Date	NA