IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19276 of 2021

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Malti Devi Wife of Bharat Singh Resident of Quarter no. 543, premnagar, Officer Colony, Murlidih 20/21 Pits Colli, Water Tanki, Mahuda, Murlidi, District-Dhanbad, Jharkhand.

... ... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Registration Excise and Prohibition Department, Government of Bihar, Patna.
2. The Commissioner Excise, Registration Excise and Prohibition Department, Government of Bihar, Patna.
3. The District Collector, Banka
4. The Superintendent of Police, Banka
5. The District Excise Superintendent
6. The SHO Karotia Police Station, District-Banka.
7. The Sub Inspector of Police (Informant) Katoria Police Station, District -Banka.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Yogesh Kumar, Advocate
For the Respondent/s : Mr. Kumar Manish (Sc5)

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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 following reliefs:-

i.) For setting aside the order dated 14-09-2021passed by the Learned Additional Chief Secretary, Government of Bihar, Patna in Excise Revision Case No. 89/2021 (Malti Devi vs. Excise Commissioner & Ors.) whereby and whereunder the revisional authority dismissed the revision application affirming the impugned order of confiscation dated 12-02-2021 as well as appellate order dated 01-06-2021.

ii.) For setting aside the order dated 01.06.2021 passed in Excise Appeal Case No. 342/2021 by the Learned Commissioner Excise, Bihar, Patna whereby and whereby rejected the appeal of the petitioner affirming the order dated 12-02-2021 passed by the District Collector, Banka in Confiscation Case No. 656/2020-2021.

iii.) For setting aside the order dated 12.02.2021 passed by the learned District Collector, Banka in Confiscation (Excise) Case No 656 of 2020-21 whereby and where under learned District Collector, has ordered to confiscate the Bolero Pick Up Van bearing registration No. JH-10BF-8290, Chassis No. MA1ZN2TBKH1E43597 Engine No. TBH1E59102 under section 58 of the Bihar Prohibition and Excise Act and further ordered for initiated procedure of auction under Section 58 (5) of the Bihar Excise and Prohibition Act, without appreciating the reply of the petitioner and considering the fact the accused driver himself admitted that he along with other conspired without knowledge/consent of the petitioner and for which this petitioner has also instituted one FIR bearing Mahuda P.S. Case No. 74 / 2020 on 15-11-2020 against the driver.

iv.) For a direction upon the concerned respondent to release the vehicle of the petitioner bearing Registration No. JH-10BF-8290, Chassis No. MA1ZN2TBKH1E43597 Engine No. TBH1E59102 which was seized in connection with FIR bearing Katoria PS case No. 230/2020, as a matter of fact the said vehicle is a commercial vehicle and same was misused by the driver of the said vehicle for which on the alleged date of occurrence one FIR bearing Mahuda P.S. Case No. 74 / 2020 on 15-11-2020 which was investigated and found case to be true.

v.) For any other relief for which the petitioner may be deemed entitled to.

Briefly stated the facts of the case is that informant is a police officer of Katoriya Police Station who lodged a written complaint alleging therein that on 11.01.2020 at 8.30 a.m., he along with other police personnel were checking the vehicle when at about 9:35 am, he saw a white coloured pickup van coming which was signalled to stop. The driver of the vehicle tried to flee away with the vehicle, however, he was chased and was apprehended with the pickup van who disclosed his name as Md. Shamsher. Huge quantity of foreign liquor (342 litre) was recovered and thereafter, the pickup van and the illicit liquor were seized and the driver was apprehended giving rise to Katoria PS Case No.230 / 2020 dated 11.11.20 instituted under Sections 30(A), 56(b) of the Bihar Prohibition and Excise Act.

As huge quantity of foreign liquor was recovered from the vehicle, as such, vehicle became liable for confiscation under Section 56 of the Excise Act. The sample of seized illicit liquor was sent for chemical examination and it was reported by letter dated 27.11.2020 that the seized article/ commodity was liquor. On the recommendation made by the police, a confiscation case being confiscation case no. 656/ 2021 was initiated against the vehicle of petitioner in which final order dated 12.02.2021 (Annexure 6) was passed by the confiscating authority, Banka by which, the vehicle of the petitioner was directed to be confiscated.

The confiscating authority has held that the explanation given by petitioner and documents produced in her defence are not convincing and are fabricated and created subsequently after seizure of the vehicle with huge quantity of illicit liquor and, accordingly, passed the order of confiscation of the vehicle.

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.
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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 failed 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.

There is presumption under Section 114 (e) of Evidence Act that official duty were regularly performed. Excise Act carries a reverse burden of proof. The moment an allegation is made and the FIR recites compliance with statutory procedure leading to recovery, the burden of proof from the very inception of the prosecution shifts to the accused without the prosecution, having to establish or prove anything more. The presumption is rebuttable. Initial burden exists upon the prosecution and only when it stands satisfied the legal burden shifts.

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 which was recovered from her vehicle, was not within her knowledge and information. There was no connivance of petitioner with respect to transportation of illicit liquor from her vehicle. However, the explanation given by the petitioner and document adduced in her defence were not found satisfactory and reliable to the satisfaction of confiscating authority.

Petitioner has failed to discharge her onus, as such, presumption will be that the vehicle was being used for transportation of illicit liquor with her consent and within her 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	18.01.2022
Transmission Date	NA