

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM OFFICIAL CHAMBERS VIA VIDEO APPLICATION)
CIVIL REVIEW No.397 of 2019**

**In
Civil Writ Jurisdiction Case No.12014 of 2018**

Shanti Devi, W/o Mahendra Sah, R/o Thana Chowk Ward No. 10, P.S.
Saharsa, Sadar, District - Saharsa.

... .. Petitioner

Versus

1. The State of Bihar.
2. That Commissioner Excise Koshi Division, Saharsa.
3. The District Magistrate, Saharsa.
4. The Superintendent of Police, Saharsa.
5. The Officer Incharge, Sour Bazar, P.S. Saharsa.

... .. Opposite Parties

Appearance :

For the Petitioner/s : Mr.Shashank Shekhar Jha, Advocate
For the Opposite Party/s : Mr.Pushkar Narain Shahi, AAG-6

**CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER**

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

3 24-03-2021 This application has been preferred seeking a review of the judgment and order dated 18.12.2018 passed in CWJC No. 12014 of 2018. Earlier this petitioner had preferred CWJC No. 12014 of 2018 seeking a direction to the respondents to provisionally release the vehicle (Pick-up Van) bearing registration no. BR01GD 7018, Chassis No. MAT524005ESC01280, Engine No. 497-SPTC43CVY609188 seized in connection with Saur Bazar P.S. Case No. 216 of 2018 dated 16.04.2018 registered for the offence under Section 30 (a) of the Bihar Prohibition and Excise Act, 2016.



While disposing of the writ application, the Hon'ble Division Bench of this Court issued the following directions:-

“.....In the given facts and circumstances where vehicle in question is lying under open sky, losing it's road worthiness, keeping in mind the interest of the State as well, we direct that pending finalization of the confiscation proceeding, the vehicle in question be released provisionally in favour of the petitioner on the petitioner's producing the document of ownership and registration in his name before the District Magistrate, Saharsa (Confiscating Authority) with two sureties along with a Bank Guarantee to the extent of the value of the vehicle as indicated in the insurance document. The petitioner while submitting the sureties shall also furnish the following affidavits/undertakings:-

(i) That the vehicle in question has never been involved in any offence of similar nature in past and shall not indulge in similar offence in future.

(ii) That the petitioner shall not indulge in creating any third party right or interest in respect of the vehicle during the pendency of the confiscation proceeding and shall not alienate the vehicle during this period.

(iii) The petitioner shall furnish an undertaking to produce the vehicle before the confiscating authority as and when required.

(iv) Prior to release of the vehicle a Panchnama would be prepared by the confiscating authority wherein the photograph of the vehicle shall be taken and will be certified by the petitioner and the same shall be kept on record so that in future if



so required it may be used as a secondary evidence. The petitioner shall furnish an undertaking not to challenge the said Panchanama in course of trial.

Subject to the above conditions, following the views expressed by the Hon'ble Division Bench of this Court and in tune with that, we dispose of this application.

The release shall be allowed within a period of 7 days from the date of submission of the sureties along with a Bank Guarantee and the undertakings as stated above. This would, however, be subject to the final order passed in confiscation proceeding.”

It appears from the averments made in the present application that at the time of disposing of the writ application no valuation of the vehicle was available in the policy document. The vehicle had only a third party insurance. Annexure '1' to the present application has been placed before this Court to show that the motor insurance certificate-cum-policy does not contain the valuation of the vehicle.

This Court has been informed that pursuant to the direction issued by the Superintendent of Excise, Saharsa the MVI valued the vehicle worth Rs.2,00,000/- and vide his letter dated 10.05.2019, he communicated the same to the competent authority.

Learned counsel for the petitioner submits that in fact the vehicle is lying under the open sky since 18.04.2018 in front of the Police Station and over the period it has lost its road worthiness and there has been erosion of its value to a great extent. According to



him, presently the vehicle would not be valued for more than Rs. 50,000/-.

It is submitted that the petitioner who is wife of a cart driver (thela chalak) is not having sufficient money and credit with the Bank to obtain a Bank guarantee. It is also stated that the confiscation proceeding has not been decided for last three years. Submission is that considering the kind of delay and the fact that the vehicle is losing its road worthiness day by day, it would be just and proper to allow the petitioner to get provisional release of the vehicle on furnishing a surety bond of Rs. 50,000/- with an undertaking that as and when required by the Confiscating Authority the petitioner will deposit the amount in terms of the surety bond submitted by her.

Learned counsel for the State submits that the confiscation proceeding is still pending, however, he does not dispute that over three years the vehicle is lying under the open sky.

In the present case, this Court has noticed the peculiar facts and circumstances. The insurance document does not contain valuation of the vehicle. The MVI has valued the vehicle about two years back at Rs. 2,00,000/- but according to the petitioner the vehicle cannot be valued for more than Rs. 50,000/- at this point of time.

We have given our anxious consideration to the submissions of the petitioner keeping in view as to how can we



protect the interest of the State as well. It is no longer res integra that a confiscation proceeding is essentially a civil proceeding and in ultimate analysis if the property which is involved in the offence is confiscated, the State would be benefited by appropriating the amount received from the sale of the confiscated property in accordance with law.

We have emphasized this aspect of the matter times and again that keeping the vehicle for long period under the open sky is neither going to benefit the State nor to the individual. We cannot be oblivious to the common experience that the police stations are not having sufficient space to keep the vehicles seized. Those vehicles are sometimes found lying somewhere outside the premises of the police station. Over the period the vehicles are losing their road worthiness and become a junk. It is in fact a national loss. In this case, we have found that the confiscation proceeding has remained pending for three years and there cannot be any doubt that during this period, the vehicle has lost its road worthiness and its worth has definitely gone down. In the case of **Sunderbhai Ambalal Desai vs. State of Gujarat** reported in **(2002) 10 SCC 283** the Hon'ble Supreme Court having considered the submissions with regard to the custody of seized articles observed in paragraph '15', '16' and '17' which are as under:-

“15. Learned Senior Counsel Mr. Dholakia, appearing for the State of Gujarat further submitted that at present in the police



station premises, a number of vehicles are kept unattended and vehicles become junk day by day. It is his contention that appropriate directions should be given to the Magistrates who are dealing with such questions to hand over such vehicles to their owners or to the person from whom the said vehicles are seized by taking appropriate bond and guarantee for the return of the said vehicles if required by the court at any point of time.

16. However, the learned counsel appearing for the petitioners submitted that this question of handing over the vehicle to the person from whom it is seized or to its true owner is always a matter of litigation and a lot of arguments are advanced by the persons concerned.

17. In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles.”

We are, therefore, inclined to allow this review application with a direction to the Confiscating Authority i.e. the District Magistrate, Saharsa to get the valuation of the vehicle done afresh by the MVI, Saharsa. Such valuation report be furnished with a photograph of the vehicle before the Confiscating Authority within seven days from the date of receipt/production of a copy of this order.

The petitioner would be obliged to submit a surety bond to the extent of the value of the vehicle as indicated in the report of the



MVI, Saharsa. On submission of surety bond of the said amount the vehicle in question shall be provisionally released in favour of the petitioner. Petitioner would be obliged to furnish an undertaking that she will not indulge in creating any third party right or interest in respect of the vehicle during the pendency of the confiscation proceeding and shall not alienate the vehicle during this period.

The photograph of the vehicle shall be certified by the petitioner and the same shall be kept on the record to be used as secondary evidence which the petitioner would not challenge.

The judgment and order dated 18.12.2018 passed in CWJC No. 12014 of 2018 stands modified in the aforesaid terms.

Application stands disposed of accordingly.

(Sanjay Karol, CJ)

(Rajeev Ranjan Prasad, J)

vats/-

AFR/-

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

