

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.603 of 2022

Abhishek Kumar @ Lalu S/o Sakuni Mahto R/o Vill- Bhagwanpur, Noonfar,
P.S.- Sadar, Dist.- Muzaffarpur

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Excise Department, Govt. of Bihar, at Patna
3. The Additional Chief Secretary, Excise Department, Govt. of Bihar, at Patna
4. The Commissioner, Excise, Bihar at Patna
5. The District Magistrate cum Collector, Muzaffarpur
6. The Senior Superintendent of Police, Muzaffarpur
7. The S.H.O, Sadar Police Station, Dist.- Muzaffarpur

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Rajeev Ranjan No.II, Advocate
For the Respondent/s	:	Mr.Vivek Prasad (Gp7)

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

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

**(The proceedings of the Court are being conducted through
Video Conferencing and the Advocates joined the proceedings
through Video Conferencing from their residence.)**

Date : 01-04-2022

Heard learned counsel for the parties.

Petitioner has prayed for following relief:-

1. That this writ application is directed for issuance of writ in the nature of certiorari/any other appropriate writ/ order / direction for quashing the order dated 02.11.21 passed by the Addl. Chief Secretary , Excise Department , Govt. Of Bihar , Patna in Excise Revision No. 209/2021 affirming the order w have failed to appreciate that passed by the Excise Commissioner in Excise Appeal case no. 558/21 dated 13.09.21 and the order dated 10.08.21 passed by the District Magistrate cum Collector , Muzaffarpur in confiscation case no. 54/2021-22 arising out of Sadar P.S case no. 640/20 and further direct the respondents to release the Glamour Motorcycle bearing reg. No. BR 06 AP 6984 and Appachi Motorcycle bearing Reg. No. BR 06 BC 0753 in favour of the petitioner which has been seized by the respondents in connection with Sadar P.S case no. 640/20 dated 17.11.20 instituted for the offence under section 30(a) of the Bihar Prohibition and Excise Act, 2016.

Allegation is recovery of 27.72 litre of illicit liquor from the seized motorcycle of the petitioner.

Petitioner claims to be the owner of the seized motorcycle.

It is submitted on behalf of counsel for the State that during pendency of writ petition, there has been amendment in the Bihar Prohibition and Excise Rules, 2021 and a new Rule 12(A) has been inserted which reads as under:-

“12. A. Release of Vehicles, Conveyance etc. on payment of Penalty:- (1) If any vehicles, conveyance, vessel, animal etc. has been seized by any police or excise officer under the Act, then in terms of section -57B(1) of the Act, the Collector or an officer authorized by him upon receipt of an application in Form IV by the owner of the said conveyance or vehicle etc., may release the said

conveyance or vehicle upon payment of such penalty as may be ordered by the Collector or the officer authorized by him.

Provided, where it is not possible to ascertain the owner of the vehicle or the owner is not coming to claim the vehicle, the Collector or the officer authorized by him, after waiting for 15 days from the date of seizure, shall proceed to confiscate and auction the vehicle as per the provisions of the Act.

(2) The penalty shall be 50% of the latest insured value of vehicle/conveyance. The insured value is the value of the vehicle as assessed by the insurance company. Where, the insured value is not available or the Collector or the officer authorized by him has reason to believe that the vehicle is undervalued, he shall get the valuation done by the District Transport Officer and 50% of that value shall be the amount of penalty.

In any case, the Collector shall not wait beyond 15 days from the date of seizure and if during this period, the accused/owner does not pay up the penalty, he shall proceed with the confiscation/auction.

(3) Notwithstanding above, if on a report by police officer or excise officer, the Collector or the officer authorized by him is satisfied that releasing the vehicle or conveyance shall not be in the public interest, he shall proceed ahead with the confiscation of the said vehicle or conveyance and its subsequent auction / disposal.

(4) Where the conveyance is such that its valuation / insurance is not possible, the Collector or the officer authorized by him shall impose such fine as he deems fit. While imposing such fine, the Collector or the officer authorized by him shall have due regard to the economic status of the individual, nature of his involvement in the crime and the quantum of intoxicant recovered.

(5) Such penalty shall be, regardless of the

outcome of the trial if any, before the Special Court, non-refundable.

(6) The owner of the vehicle / conveyance shall, after the release of the vehicle / conveyance, produce the vehicle/ conveyance as and when required by the authorities.

[Explanation:- **In all pending / ongoing cases of confiscation/auction of vehicles, the Collector or the officer authorized by him may give an opportunity to the existing owner to pay the aforesaid penalty and get the vehicle released. Upon satisfaction about ownership and upon payment of such penalty, the ongoing confiscation/auction proceeding may be dropped and the vehicle released.]”**

In said view of the matter, the writ petition is disposed of with liberty to petitioner to avail the remedy of the amended provision 12(A) of the Bihar Prohibition & Excise (Amendment) Rules, 2022. It is made clear that this Court has not expressed any opinion with respect to merit of case.

Equally, liberty reserved to petitioner to approach this Court for same and subsequent cause of action, if so arises.

(Sanjay Karol, CJ)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.04.2022
Transmission Date	NA

(S. Kumar, J)