

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.836 of 2022

Pankaj Mishra Son of Umanand Mishra Resident of Bela Chapra, Police Station- Bela, District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Excise Department, Government of Bihar, Patna.
3. The Additional Chief Secretary, Excise Department, Government of Bihar, Patna.
4. The Collector, Muzaffarpur.
5. The Excise Commissioner, Government of Bihar, Patna.
6. The Deputy Collector, Land Reforms, East Muzaffarpur.
7. The Officer-in-charge, Mushari Police Station, Muzaffarpur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Ravi Prakash Dwivedi, Advocate
For the Respondent/s : Mr.Lalit Kishore (Ag)

**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 , the present writ application is being filed for the grant of appropriate writ/ direction for the release of Scorpio Vehicle of the petitioner bearing Chassis No. MAITA2TDKK2D 40964, Engine No. TDK4C 83104, in favour of the petitioner, seized in connection with Mushari P.S. Case No. 49 of 2020, registered for the offences under section 30(a), 37(c) Bihar Excise and Prohibition Act, 2016, after quashing the Impugned orders dated 15.02.2021, passed in Confiscation Case No. 16 of 2020-21 , passed by the learned Deputy Collector, Land Reforms, East Muzaffarpur (Annexure-3) and also the Appellate order of the learned Excise Commissioner, Bihar, Patna dated 09.04.2021, passed in Excise Appeal No. 264 of 2021 (Annexure-4) as well as Revisional order dated 13.12.2021, passed in Excise Revision No. 177 of 2021, passed by the learned Additional Chief Secretary, Excise , Bihar, Patna (Annexure-5) and allow this application with cost and cost of litigation.

Petitioner claims to be the owner of the seized vehicle.

Allegation is recovery of 750 ml. of illicit liquor from the seized vehicle of the petitioner.

It is further submitted that a meagre quantity of 750 ml. of liquor has been recovered from the vehicle, as such, it cannot be construed that the vehicle was used for transporting/carrying illicit liquor.

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)

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.04.2022
Transmission Date	NA