

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1017 of 2022

=====

Rajendra Prasad son of Ram Lakhan Mahto, resident of Village and Post-Kurmawan, Police Station-Barachatti, District-Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
2. The Additional Chief Secretary, Registration, Excise and Prohibition Department, Bihar, Patna.
3. The Excise Commissioner, Government of Bihar, Patna.
4. The District Magistrate-cum-Collector, Gaya.
5. The Senior Superintendent of Police, Gaya.
6. The Excise Superintendent, Gaya.
7. The Officer-in-charge, Sherghati Police Station, District-Gaya.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr.Manish Kumar No2, Adv
For the Respondent/s : Mr.Vikash Kumar (SC11)

=====

(The proceedings of the Court are being conducted by Hon'ble the Chief Justice /Hon'ble Judges through Video Conferencing from their residential offices/residences. Also, the Advocates and the Staffs joined the proceedings through Video Conferencing from their residences /offices.)

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 01-04-2022

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s):-

“1.That this present writ application is being filed for issuance of writ/writs, order/orders for setting aside the order dated- 11.10. 2021 passed in Excise Revision No. 128 of 2021 by the learned Additional Chief Secretary Registration, Excise and Prohibition Department, Bihar, Patna whereby and whereunder the revision application filed against the order dated- 08.03.2021 passed in Excise Appeal Case No 180 of 2021 by the learned Commissioner, Excise Bihar, Patna has

been rejected and upheld the said order as well as the order dated- 10.10.2020 passed in Excise Confiscation Case No. 49 of 2020 by the learned Collector, Gaya, by which the confiscation proceeding with respect to the Vehicle (Mahindra Scorpio) of the petitioner bearing Registration No. BR-02PA-5460 having Engine No. WGG4J322053 and Chassis No. - MA1TA2WG2J30650 seized by the Sherghati Police Official, Gaya in connection with Sherghati P.S Case No. 496 of 2019 which has been registered for offence under sections 30 (a) /30 (d) of the Bihar Prohibition and Excise Act and Section 25(1-b)/26 of the Arms Act has been concluded and the vehicle of the petitioner has been confiscated and directed to sale the same in public auction and further for issuance of direction to the respondent authorities to release the seized vehicle (Mahindra Scorpio) of the petitioner in his favour and/or for any other relief or reliefs to which the petitioner may be found entitled to in course of hearing of this writ application.”

Petitioner claims to be the owner of the seized vehicle.

Allegation is recovery of 25 litre of illicit liquor and 80 Kg of mahua flower from the seized vehicle of the petitioner.

It is submitted by learned 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)

ranjan/-

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