IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1033 of 2022

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Chandani Kumari Wife of Sri Sita Ram Sah Resident of House No. 25, Gangvara, Post Office - Gangwara, Police Station - Hansdiha, District-Dumka (Jharkhand).

... ... Petitioner/s

Versus

1. The State of Bihar through Additional Chief Secretary, Prohibition, Excise and Registration Department, Government of Bihar, Patna.
2. The Excise Commissioner, Prohibition, Excise and Registration Department, Government of Bihar, Patna.
3. The District Magistrate, Khagaria.
4. The Additional Collector, Khagaria.
5. The Superintendent of Excise, Khagaria.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Uday Chand Prasad, Adv
For the Respondent/s	:	Mr.Vivek Prasad (GP7)

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(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):-

> "(i) For issuance of writ in the nature of certiorari for quashing of order dated 28.12.2021 passed in Excise Revision No. 260 of 2021 by Additional Chief Secretary, Prohibition, Excise and Registration Department, Bihar, Patna whereby the excise prosecution report registered by the Excise police authorities was correct and order passed by the learned Additional Collector cum Additional District Magistrate and Excise Commissioner for confiscation of the vehicle is correct, hence the same are hereby affirmed and

learned Additional Collecdtor cum Additional District Magistrate, Khagaria may proceed with auction in the confiscation proceeding as per the Act.

(ii) For quashing of order dated 26.10.2021 passed in Excise Appeal NO. 703 of 2021 by Excise Commissioner, Bihar, Patna, whereby order passed by Additional Collector cum Additional District Magistrate for confiscation of vehicle is affirmed and dismissed the appeal filed by the petitioner.

(iii) For quashing of order dated 17.07.2021 passed in Confiscation Case No. 09 of 2020-21 by Additional Collector cum Additional District Magistrate, Khagaria whereby Mahindra Bolero Pick up van bearing registration No. JH04R-9621 of the petitioner has been directed to be confiscated under section 58(i) of the Bihar Prohibition and Excise Act, 2016(amended 2018).

(iv) For direction upon the Respondent authorities to release Mahindra Bolero Pick up Van bearing Registration No. JH-04R-9621 confiscated in connection with Khagaria Excise Case No. 23-C3 of 2021 dated 05.03.2021 registered under section 30(a) of Bihar Prohibition & Excise Act, 2016(Amended 2018)."

Petitioner claims to be the owner of the seized vehicle.

Allegation is recovery of 675 litre of illicit liquor 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