

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1592 of 2022

Dinesh Kumar Son of Ramji Saw, Resident of Village - Naya Bazar, Dalapatti, in front of R. Lal College - Lakhisarai, P.S. - Lakhisarai, District - Lakhisarai.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise Department, Government of Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Excise Commissioner, Bihar, Patna.
4. The Inspector General of Police, Bihar, Patna.
5. The District Magistrate - Cum - Collector, Jamui.
6. The Superintendent of Police, Jamui.
7. The S.H.O., Sono Police Station, Jamui.
8. The Investigating Officer, Sono P.S. Case No. 314 of 2020, Sono Police Station, Jamui.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Anuj Kumar, Advocate
For the Respondent/s	:	Mr. Kumar Manish (Sc5)

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 : 22-04-2022

Heard learned counsel for the parties.

Petitioner has prayed for following reliefs:-

i. The order dated 24.08.2021 passed by the Collector, Jamui (Respondent No. 5) in Confiscation Case No. 47 of 2021 (Annexure - 3) whereby and where under he has directed the concerned Respondent Authorities to initiate confiscation proceeding against the Petitioner's Scorpio Vehicle bearing Reg. No. BR 53P 0347, Chassis No. MA1TA2TDK12D36914, Engine No. TDJ4C83338 which was seized in Sono P.S. Case No. 314 of 2020 registered for offence under sections 272, 273 of the Indian Penal Code and section 30(a) of the Bihar Prohibition & Excise Act, 2016 in which merely by the Respondent No. 8.

ii. The order dated 23.11.2021 passed by the Commissioner, Excise, Bihar, Patna

(Respondent No. 3) in Excise Appeal Case No. 67 of 2020 (Annexure - 4) whereby and where under he has upheld the order dated 03.03.2020 of the Collector, Gopalganj (Patna).

- B. A writ in the nature of MANDAMUS or any other appropriate writ/s, order/s directing the Respondent Authorities the following:-
- i. To release the Scorpio Vehicle bearing Reg. No. BR 53P 0347, Chassis No. MA1TA2TDK12D36914, Engine No. TDJ4C83338 which was seized in Sono P.S. Case No. 314 of 2020.
 - ii. To hold that the orders / actions (Annexure - 3 & 4) of the Respondent Authorities are not tenable in the eye of law and violation of Article 300A of the Constitution of India.
 - iii. To hold that the orders / actions (Annexure - 3 & 4) of the Respondent Authorities amounts to double jeopardy.
 - iv. To hold that the orders dated 24.08.2021 and 23.11.2021 of the Respondent No. 5 & 3 respectively are null and void.
- C. To any other relief/s to which the Petitioner is found entitled to.

Petitioner has approached this Court without availing the statutory remedy of revision against the impugned appellate order, as such, liberty is granted to petitioner to file revision

against the appellate order before the Revisional Authority and if any such Revision is filed within 4 weeks, then Revisional Authority shall decide the revision petition preferably within 8 weeks from the date of its filing on its own merit.

During pendency of revision petition, confiscated property / vehicle shall not be auction sold, if not already auction sold.

OR

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 view of amendment in the Excise Act, and same being applicable in pending cases, it shall be open for the petitioner to get his/her vehicle released after making payment of penalty in terms of Rule 12(A) inserted by amending Bihar Prohibition and Excise Rules, 2021.

With said observation and direction, this writ petition is disposed of.

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

(Sanjay Karol, CJ)

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.04.2022
Transmission Date	NA