IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1565 of 2022

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Mukesh Kumar S/o- Sri Deo Nandan Rai R/v- Digha Bansh Koti, P.S.- Digha, Distt.- Patna.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise Department, Government of Bihar, Patna.
2. The District Magistrate cum Collector, Buxar.
3. The Superintendent of Police, Buxar.
4. The Deputy Superintendent of Police, Dumraon, Buxar.
5. The Station House Officer, Dumraon, Buxar.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Vijay Kumar Sinha, Advocate
For the Respondent/s	:	Mr.Vikash Kumar (Sc11)

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 relief:-

1. That this writ application has been filed on behalf of the petitioner for issuance of an appropriate writ/writs/order/orders commanding/directing the respondents for not selling the Maruti New Swift VXI BSIV

to the petitioner in Public auction bearing registration no. BR01DA-3831, Chassis No.- MA3EHKD1S00B76075, Engine No.- 1860961 after quashing the notice dated 03.12.2021 issued by the O.P. Incharge, Naya Bhojpur (O.P.) Buxar (the Annexure-8 of the Petition) in connection with Dumraon P.S.Case No.- 72 of 2017 for the offence under Section 272, 273, 34 I.P.C. and 30(a) of the Bihar Prohibition and Excise Act, 2016 pending before the court of the Learned Additional Sessions Judge-II, Special Court, Excise, Buxar.

Petitioner's vehicle was seized by police and from the said vehicle 25.92 litre of illicit foreign liquor was recovered giving rise to Dumraon P.S. Case No. 72 of 2017 for the offences punishable under Section272, 273 IPC and 30(a) of the Bihar Prohibition and Excise Act, 2018, the vehicle of the petitioner was provisionally released by this Court by order dated 30.08.2017 (Annexure-6).

Confiscation proceeding was initiated against the petitioner being Confiscation Case No. 202/2017 in which notices were received by the petitioner for his appearance on 06.04.2018

It has been submitted by learned counsel for the petitioner that though notice was served upon the petitioner but final order of confiscation has been passed by the confiscating authority without affording reasonable opportunity of hearing to the petitioner.

In view of the above, the writ petition is disposed with liberty to petitioner to file a petition for recall of *ex parte* order and the Confiscating Officer shall pass a fresh order after affording opportunity to the petitioner to file his show cause and shall pass final order after hearing all the parties concerned.

However, if the Confiscating Officer finds that in spite of granting opportunity, petitioner did not appear and contest the proceeding, he shall dismiss the recall petition and petitioner shall have liberty to file appeal against the order of confiscation of the vehicle passed by the Confiscating Authority before the Appellate Authority, who shall decide the appeal in accordance with law.

During pendency of confiscation /appeal proceeding the authorities shall not take the possession of the vehicle which at present is in possession of petitioner having been provisionally released in his favour, however, if petitioner fails to file recall petition or appeal against the confiscation order within 8 weeks, the authority shall be at liberty to get the possession of the vehicle in accordance with law.

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:-
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> (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.
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> (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.
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> (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, nonrefundable.

(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.]

57B-Things or premises liable to be released upon penalty-

(1) Any animal, vehicle, vessel or other conveyance used for committing any offence punishable under this Act that has been seized by any police Officer or Excise Officer may be released by the Collector upon payment of such penalty as may be notified by the State Government.

(2) Any premises or part thereof used for committing any offence punishable under this Act that has been seized by any police Officer or Excise Officer may be released by the Collector upon payment of such penalty as may be notified by the State Government.

(3) If the person concerned does not pay the penalty, then the Collector shall proceed to confiscate the said animal, vehicle, vessel or other conveyance and premises as per section-58.

[Explanation 1: It shall not be a right of the accused to get his conveyance, item or premises released upon payment of the required penalty. The Collector, based upon a report by a police Officer or an Excise Officer, may, for reasons to be recorded in writing, still refuse to release Patna High Court CWJC

No.5906 of 2022 dt.10-05-2022 7/7 the said conveyance, item or premises and proceed ahead with confiscation and auction/destruction.]

[Explanation 2: The Collector shall, from the date of this Amendment coming into force, close the on-going confiscation proceeding if the person concerned pays the penalty as notified and release such vehicle, conveyance or premises.] [Explanation 3: Such release shall not affect the outcome of trial, if any, before the Special Court.]"

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 in terms of Rule 12(A) inserted by amending Bihar Prohibition and Excise Rules, 2021.

Petition stands disposed of with the aforesaid observations/directions.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.05.2022
Transmission Date	NA