

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1637 of 2022

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Harish Upadhyay Son of Jagarnath Upadhyay Resident of Village Trikalpur,
PS - Garwar, District- Ballia (UP)

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Registration, Excise - and Prohibition Department, Government of Bihar, Patna.
2. The Collector cum District Magistrate, Buxar.
3. The Superintendent of Police, Buxar.
4. The Superintendent of Excise Department, Buxar.
5. The Sub- Inspector, Excise Department, Buxar.

... .. Respondent/s

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Appearance :

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

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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

A supplementary affidavit has been filed on behalf of the petitioner in which it is submitted by learned counsel for the petitioner that due to typographical error, in para 1 and prayer portion of this petition, Vehicle Registration No. UP60AI 4224 has wrongly been mentioned in place of UP60AE-4224 and, as such, he seeks correction to the aforesaid extent.

In view of above, let the same be corrected and read accordingly.

Learned counsel for the petitioner is permitted to make necessary correction in the main file.

Learned counsel for the petitioner further submits that during the pendency of this writ petition, confiscation proceeding was initiated by respondent being confiscation case No.80/21 / 463/2021 of 2022, which is pending and not final order has been passed.

Heard learned counsel for the parties.

Petitioner has prayed for following reliefs:-

(I) For release of Maruti Omni Van bearing Registration No.UP60AE-4224, Chassis No.MA3EVB11S01765121 and Engine No.F8BIN-4981718 seized in connection with official complaint no.236(0) of 2021 (State Vs. Bhrigunath Singh) dated 29.11.2021.

(ii) For issuance of direction to release the Maruti Omni Van bearing Registration No. UP60AE-4224, Chasis No.MA3EVB11S01765121 and Engine No.F8BIN-4981718 in the favour of petitioner and to give him the possession of the Maruti Omni Van.

(iii) For any other relief or reliefs for which the petitioner is found entitled in the eye of law.”

In said view of the matter, the District Collector/Confiscating authority, Buxar is directed to conclude the confiscation proceeding within 90 days from the date of filing of show cause by the petitioner, if not already filed or within 90 days if the show cause has been filed from the date of

receipt/production of a copy of order passed by this Court, failing which, the truck of the petitioner shall be provisionally released till conclusion of confiscating proceeding and possession to be handed over to the petitioner, on furnishing adequate sureties and undertaking to the satisfaction of District Collector / Confiscating Authority, Buxar.

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) and 57(B) 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.]”

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 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 said view of the matter, the writ petition is disposed of with liberty to the petitioner to avail the remedy of the amended provision of 12(A) and 57B 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 the case.

Equally, liberty reserved to petitioners/original house owner 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	05.05.2022
Transmission Date	NA