

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2309 of 2022

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Sakir Hussain S/o Md. Mazhar, R/o Village-Rudalpur, P.S.-Jalalpur, Distt.-Saran (Chapra).

... .. Petitioner/s

Versus

1. The State of Bihar through the Commissioner, Excise, Bihar, Patna.
2. The District Magistrate-cum-Collector, Saran at Chapra.
3. The Additional Collector, Saran at Chapra.
4. The Superintendent of Police, Saran at Chapra.
5. The S.H.O. of Manjhi Police Station, Saran at Chapra.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Gajendra Kumar Singh
For the Respondent/s : Mr.Vivek Prasad (Gp7)

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 22-04-2022

Heard learned counsel for the parties.

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

"(a) For quashing of the order dated 04.05.2021 passed by the Additional Collector, Saran, at Chapra in Excise Confiscation Case No. 1048/2019 arising out of Manjhi P.S. Case No. 154 of 2019.

(b) For direction to release Bolero Car bearing registration No. BR04PA-0695, Chassis No. MA1PL2GKG2D70746, Engine No. GPG4D83814 in favour of the petitioner, whose seizure has not been made as per seizure list of Manjhi P.S. Case No. 154 of 2019.

(c) For staying the operation of the order dated 04.05.2021."

It has been submitted by learned counsel for the

petitioner that final order of confiscation has been passed by the confiscating authority in Confiscation Case No. 1048 of 2019 and his Bolero vehicle has been ordered to be confiscated.

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 if the confiscating authority comes to a finding on the basis of records that there was no proper and valid service of notice upon the petitioner, he may recall the *ex parte* order and 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.

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

During confiscation/Appellate proceeding, confiscated property/vehicle shall not be auction sold.

OR

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 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.

(Sanjay Karol, CJ)

(S. Kumar, J)

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