

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2392 of 2022

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Rajan Kumar, Son of Shyam Sundar Arya Resident of Village - Fatehpur,
Ward No. 11, P.S. - Gogri, District - Khagaria.

... .. Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Department of Excise, Government of Bihar, Patna.
2. The Additional Chief Secretary - Cum - Special Superintendent Prohibition, Bihar, Patna.
3. The Excise Commissioner, Bihar, Patna.
4. The District Magistrate - Cum - Collector, Khagaria.
5. The Superintendent of Police, Khagaria.
6. The Deputy Superintendent of Police, Khagaria.
7. The Officer - in - Charge, Police Station - Pasraha, District - Khagaria.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Roshan Kumar Mishra, Advocate
For the Respondent/s : Mr.Kumar Manish (SC 5)

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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

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s).

- i) To issue a writ in the nature of certiorari, setting aside order dated 05.10.2021 (Annexure-5) passed by Respondent No.2, Additional Chief Secretary-cum-Special Superintendent Prohibition, Bihar, Patna, in Revision Case No.170/2021 affirming the order dated 19.01.2021 passed by the Excise

Commissioner, Bihar, Patna in Excise Appeal Case No. 222/2020 by which the appeal preferred by the petitioner U/S 92(1) of the Bihar Prohibition & Excise Act, 2016 against the order dated 04.09.2020 passed by the Collector-cum-District Magistrate, Khagaria in Excise Confiscation Case No. 62/2019-20, directing therein to confiscate the Hundai car of the petitioner bearing registration No.BR09Z-8287. The same was filed in compliance of order dated 20.07.2021 passed by this Hon'ble Court in C.W.J.C. No. 11811 of 2021 (Rajan Kumar Vs The State of Bihar and others).

- ii) Further setting aside the order dated 19.01.2021 passed by the Excise Commissioner, Bihar, Patna in Excise Appeal Case No.222/2020 as well as the order dated 04.09.2020 passed by the Collector-cum-District Magistrate, Khagaria in Excise Confiscation Case No. 62/2019-20, arising out of Pasraha P.S. Case No.40/2019, corresponding to the G.R. No. 720/2019, registered under Section 30(a)/38(1) of Bihar Prohibition and Excise Act, 2016 and Section 25(1-b)a, 26/35 Arms Act,

whereby and where-under the vehicle of the petitioner namely Hyundai car bearing registration No.BR09Z-8287 has been confiscated and directed the concerned authority for selling it by public auction U/S 58(5) of the said Act and proceeds be deposited with the State Government.

- iii) To issue a writ of mandamus, commanding and directing the Respondent authority concerned to release the aforesaid vehicle i.e. Hyundai car bearing registration No.BR09Z-8287 in favour of the petitioner who is bonafide owner of the vehicle in question forthwith which is still lying in the concerned Police Station under open sky.
- iv) Any other relief or reliefs which this Hon'ble Court may deem fit and proper in the facts and circumstances may also be granted.

Petitioner claims to be the owner of the seized vehicle.

Allegation is recovery of 99.180 litres 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) as well as 57B have 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 petitioner to avail the remedy of the amended provision 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 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)

Rajiv/veena-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	