

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2480 of 2022

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Mohan Sah, Son of Parikchhan Sah, Resident of Village-Parihar, P.S.-Parihar,
District-Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Commissioner, Excise Department, Govt. of Bihar, Patna.
3. The District Magistrate, Sitamarhi.
4. The Superintendent of Police, Sitamarhi.
5. The Officer-in-Charge, Bela, Police Station-Sitamarhi.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Mohan Kumar Singh, Advocate
For the Respondent/s : Mr.Kumar Manish (S.C. 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) For the issuance of an appropriate writ/writs or direction in the nature of Certiorari to quash and set aside the order dated 23.02.2021 passed by Respondent Commissioner, Excise, Bihar, Patna in Excise Appeal Case No. 117/2021 Mohan Sah Versus Collector, Sitamarhi, whereby and where under the respondent has been pleased to dismiss the appeal filed under Excise Act. The appeal has

been dismissed on the basis of merely on lodging an FIR in the said FIR the trial is still going on.

(II) Further for issuance of an appropriate writ to quash and set aside the order dated 20.03.2020 passed by learned Collector, Sitamarhi in Confiscation Case No. 1067/2019 filed by petitioner for release of Pickup Van having Registration No. BR-06GD-6182.

The aforesaid pickup van derived by the driver, if driver commit any wrong, he should suffer the pick van should released, its evidentiary value decrease day to day value. The respondent without considering section 56 of Excise Act and without record a positive finding as to whether the pickup van was used for transportation of liquor, merely lodging an FIR they dismiss the appeal.

(III) Further for a direction to the respondents not to auction the seized and confiscated pickup van till pendency of instant writ petition.”

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 the 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 vehicle/property shall not be auction sold, if not already 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 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) 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.

Interlocutory Application(s), if any, stands disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Rajiv/veena-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	