

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2706 of 2022

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Rakesh Kumar Son of Ajay Singh, Resident of Village- Samastichak, P.S.-
Bhagwanganj, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Excise and Prohibition, Government of Bihar, Patna.
2. The Principal Secretary, Department of Excise and Prohibition, Government of Bihar, Patna.
3. The District Magistrate-cum-Collector, Patna.
4. The Superintendent of Police, Patna.
5. The District Supply Officer, Patna.
6. The Excise Superintendent, Department of Excise, Patna.
7. The Station House Officer, Bhagwanganj P.S., Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Manoj Kumar Singh, 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 by Hon’ble the Chief Justice/Hon’ble Judges through Video Conferencing from their residential offices/residences. Also the Advocates and the Staffs joined the proceedings through Video Conferencing from their residences/offices.)

Date : 01-04-2022

Heard learned counsel for the parties.

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

“That, by way of this writ petition the petitioner

craves indulgence of this Hon'ble Court, for the issuance of a writ in the nature of Mandamus to release the Tata Magic bearing its Registration No.BR21P/4313, Engine No. MAT445502JV40098 Chechis No. 275ID107, FRYS95097-Model 2018, Which has been seized by the Bhagwanganj police in connection with Bhagwanganj P.S. case No.121 of 2021 instituted u/s 30 (a) of Bihar Prohibition and Excise Act., 2018 from which the allegedly recovery of plastic bag containing one litter of illegal mahua liquor from the back dala of the vehicle has been made and the petitioner further prays for the stay of confiscation case No.5497 of 2021-22.”

Allegation is recovery of 1 litre of illicit mahua liquor from the Tata Magic vehicle of the petitioner. Petitioner claims to be the owner of the seized vehicle.

It is further submitted that a meagre quantity of 1 litre of liquor has been recovered from the vehicle, as such, it cannot be construed that the vehicle was used for transporting/carrying illicit liquor.

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.

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)

Ranjan/-

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