IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2770 of 2022

Pratap Singh Soni, son of Jagdish Singh Soni, R/o 86, Shankar Nagar, P.S.- Brahmpuri, District-Jaipur (Rajasthan).

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Prohibition, Excise and Registration Department, Govt. of Bihar, Patna.
2. The Excise Commissioner, Bihar, Patna.
3. The Collector-cum-District Magistrate, Gopalganj.
4. The Sub Divisional Officer, Gopalganj.
5. The Superintendent of Police, Gopalganj.
6. The Superintendent of Excise, Gopalganj.
7. The Sub Inspector, Excise, Jalalpur Check Post (Samekit check post Balathari), Gopalganj.

... ... Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Ranjeet Kumar Pandey, Advocate
For the Respondent/s	:	Mr.Vikash Kumar (Sc 11)

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 following relief:-

(i) For issuance of writ/writs, order/orders or direction/directions in the nature of certiorari for setting aside order dated 17.11.2021 passed in Confiscation (Excise) Case no. 1585/2021 arising out of Excise case no. 250/2021, by Collector, Gopalganj whereby and where under order for confiscation has been passed under section 58(2) of Bihar Prohibition and Excise Act 2016 with respect to Bus of the petitioner having Registration No. RJ14 PF 0111 and further order has been passed under section 58(5) of the Act for auction sale of the vehicle after getting valuation from Motor Vehicle Inspector, Gopalganj.

(ii) For issuance of writ/writs, order/orders or direction/directions in the nature of mandamus directing the respondent authorities particularly Respondent 3 to 7 to release Bus of the petitioner bearing Registration No. RJ14 PF 0111, which has been seized in connection with Excise Case No. 250/2021 U/s 30(a) of Bihar prohibition and Excise Amendment Act, 2018 on the alleged recovery of 65.880 litre of foreign liquor from dicky of bus.

(iii) For any other relief/reliefs for which the petitioner may be found entitle in the eye of law and in the facts and circumstances of the case may also be granted in favour of the petitioner.

Petitioner claims to be the owner of the seized transport bus which was searched and allegedly 65.880 litres of foreign liquor was recovered and the driver, co-driver and conductor were apprehended.

It is submitted by learned counsel for the petitioner that petitioner is owner of the aforesaid bus and he executed power of attorney on 04.03.2021 in favour of Sri Vivek Garg for looking after the vehicle and petitioner had no knowledge that liquor was kept in the bus. It is further submitted that bus in question is a commercial vehicle having all India Tourist Permit and it is a passenger bus used to ply from Jaipur to Narpatganj(Supaul) in Bihar and it appears that any of the passengers sitting in the bus might have kept the said liquor in the bus, for which, neither driver or Khalashi were aware that said liquor was kept in the bus, for which bus cannot be confiscated.

It appears that notice was issued to the petitioner for his appearance on 17.11.2021 and on the same date order has been passed by the District Collector, cum Confiscating Authority by which the seized vehicle has been directed to be confiscated and auction sold and as such petitioner was not granted reasonable opportunity to contest the confiscation proceeding. In the order also there is no mention of any chemical analyst report certifying that seized commodity is intoxicant. There is no consideration of any evidence with respect to search and seizure and recovery of intoxicant from the vehicle of the petitioner. The order is unreasoned and non speaking.

In the facts and circumstances of the case, the order dated 17.11.2021 passed by District Magistrate/Confiscating Authority, Gopalganj in Confiscation (Excise) Case No.1585/2021 is quashed and set aside and matter is remanded to the District Magistrate, Gopalganj to hear the matter afresh and decide the matter in accordance with law.

During pendency of confiscation proceeding the seized 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) 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.
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> 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.
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> (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.
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> 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.
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> (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.
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> (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 get his/her vehicle released in terms of the amended provision 12(A) and 57B of the Bihar Prohibition & Excise (Amendment) Rules, 2021. 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)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.05.2022
Transmission Date	NA