IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3082 of 2022

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Amrendra Kumar Pandey Son of Awadhesh Prasad Pandey Resident of Mohalla - Kayasth Tola near Shiv Mandir Ward No. -29 Saharsa P.S. - Saharsa, District- Saharsa.

... ... Petitioner/s

Versus

1. The State of Bihar Through the Chief Secretary old Secretariat Bihar, Patna.
2. The Additional Chief Secretary Excise Department Government of Bihar Patna.
3. The Commissioner Excise Department Govt of Bihar Patna.
4. The Divisional Commissioner Koshi Division Saharsa.
5. The District Magistrate Saharsa.
6. The Superintendent of Police Saharsa.
7. The Excise Superintendent Saharsa.
8. The Excise Inspector Saharsa.
9. The Motor Vehicle Inspector Saharsa.
10. The District Transport Officer Saharsa.
11. The SHO Bakhtiyarpur Police (Station) District- Saharsa.
12. The Incharge Officer Revenue Saharsa.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Amarnath Jha, Advocate

For the Respondent/s : Mr.Vivek Prasad (G.P. 7)

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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 setting aside The order dated 16.1.2021 passed by The District Magistrate Saharsa in Confiscation Case No 511 /2020 – 2021 as contained in Annexure – 3 to the petition whereby and where under the Tata

Tiago Car bearing Registration No – BR – 19 N 5878 of the Petitioner seized in Connection with Bakhtiyarpur P.S Case No 294 / 2020 has been confiscated and direction for auction has been given .

(ii) For setting aside the order dated 26/3/2021 passed by the Commissioner Excise Bihar Patna in Excise Appeal No 219/2021 as Contained in Annexure - 4 to this Petition whereby and whereunder the order dated 16.1.2021 of the District - Magistrate Saharsa in Confiscating Case No 511/2020 - 2021 as Contained in Annexure - 3 has been Confirmed .

(iii) For setting aside the order dated 2.11.2021 passed by the Additional Chief

Secretary Excise Department Govt of Bihar Patna in Excise Revision No 199/2021 as Contained in Annexure 6 to this Petition whereby and whereunder the said order dated 16.1.2021 of the District Magistrate Saharsa in Confiscation Case No 511/2020 - 2021 as Contained in Annexure 3 to the Petition and the said order dated 26/3/2021 passed by the Commissioner Excise Department Govt of Bihar Patna in Excise Appeal No 219/2021 as Contained in Annexure -4 to this Petition have been Confirmed .

(iv) For direction to release the aforesaid Tata Tiyago Car bearing Registration No BR 19 N – 5878 in favour of the Petitioner .

(v) For restraining the respondents from putting the Confiscated Property / vehicle on auction sale till disposal of the Present writ application.

(vi) For any other relief (S)/ directions to which the Petitioner is entitled .

Briefly stated, the facts of the case is that informant is a police officer who has alleged in his written complaint upon which FIR was drawn that on 07.09.2020 at about 10:30 pm while he was on patrolling duty along with other police personnel, he received a confidential information that some persons in a Car are carrying illicit liquor and upon receipt of said information he reached said place and started vehicle checking when he found three persons sitting in a Car and on search of said Car, huge quantity of illicit liquor was recovered and accordingly, the Car and illicit liquor (81 litre) were seized and all three occupants were arrested giving rise to BKP P.S. Case No. 294 of 2020 dated 08.09.2020 in Saharsa district under Section 30(a) of the Bihar Prohibition and Excise Act, 2016.

On recommendation of S.P. Saharsa by letter dated 06.10.2020 confiscation proceeding was initiated against the seized vehicle and the owner of the vehicle (petitioner) was noticed who filed his show cause stating therein that he was neither arrested nor present at the place of occurrence and has been falsely implicated in this case. No illicit liquor has been recovered from the vehicle. Seizure list has not been prepared in accordance with law, however, prosecution stated that huge quantity of illicit liquor has been recovered from the seized vehicle and three persons were arrested from the Car and seizure list has been prepared in accordance with law and there are sufficient materials on record to establish that illicit liquor has been recovered from the seized vehicle and as such, seized vehicle is liable for confiscation.

After hearing both the parties the learned Collector, by order dated 16.01.2021 passed in confiscation case no. 511 of 2020-21, ordered for confiscation of the seized vehicle against which petitioner preferred Appeal being Excise Appeal No. 219 of 2021 in which it was pleaded that appellant is the owner of the seized vehicle and was neither present nor arrested from the place of occurrence and he has no role in carrying the illicit liquor as such his vehicle should be released.

After hearing the parties, the Appellate Authority dismissed the appeal of petitioner by order dated 26.03.2021, holding that petitioner has not produced any evidence to discharge his onus that the seized vehicle was not used for transportation of illicit liquor. The Appellate Authority has also held that according to report dated 11.09.2020 of chemical analyst the seized liquor was found to be intoxicant.

Against the order passed by the Appellate Authority, petitioner preferred Revision before the Principal Secretary, Department of Prohibition being Excise Revision No. 199 of 2021, in which it has come that the seized vehicle was driven by the son of the petitioner and after hearing the parties the Revision Authority dismissed the revision petition and affirmed the order passed by the Confiscating Authority as well as Appellate Authority, relevant paragraph no. 11 of which is reproduced hereinbelow:-

> "Further clause(3) of section 32 of the said Act provides that where any equipment, machinery, animal, vessel, cart, vehicle, conveyance or any premises are used in commission of an offence under the Act and are liable to confiscation, the owner or occupier thereof would need to account satisfactorily

> and in the absence of a satisfactory explanation, the presumption that the accused person committed the offence shall arise, unless proved otherwise. In the present context, the revisionist has failed to rebut this mandatory presumption so raised against him and no satisfactory explanation was given by as to how the seized illicit liquor was found in his vehicle."

Heard learned counsel for the parties and perused the materials available on record. Once the initial burden is discharged by the department that offence under the Act has been committed and the illicit liquor which has been recovered from the vehicle of petitioner is intoxicant by producing the report of chemical analyst, seizure memo, and FIR and there is presumption under section 32(3) of the Act that offence has been committed under the Act and the burden shifts upon the owner of the vehicle for its satisfactory explanation and in absence of satisfactory explanation there is presumption that offence under the Act has been committed. Rule-13(b)(v) of Bihar Excise Rules-2021 reads as follows, *"the Collector, after hearing the parties on the satisfaction that the offence has been committed in terms of the Act shall pass appropriate order with respect to seized vehicle or vessel or conveyance as the case may be".*

All the authorities under the Act have held that huge illicit liquor has been recovered from the seized vehicle of petitioner and petitioner has failed to account for such huge recovery from his car, as such there is presumption that offence under the Act has been committed and petitioner has failed to satisfactorily account for by producing any evidence or giving any satisfactory explanation, as such seized vehicle was ordered to be confiscated. This Court does not find any error or infirmity in the order passed by the Confiscating Authority, Appellate Authority or the Revisional Authority.

Accordingly, the writ petition is dismissed.

(Sanjay Karol, CJ)

(S. Kumar, J)

Rajiv/veena-

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