

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3436 of 2022

Md. Israfil, Son of Md. Sakur @ Abdul Sakur, resident of Ishlampur, Ward No. 12, Police Station-Jogbani, District-Araria.

... .. Petitioner/s

Versus

1. The State of Bihar represented through the Additional Chief Secretary, Prohibition Excise and Registration Department (Excise), Government of Bihar, Patna.
2. The Excise Commissioner, Bihar, Patna - The Appellate Authority.
3. The District Magistrate, District-Araria, The Confiscating Authority.
4. The Superintendent of Police, District-Araria-The Requisitioning Authority.
5. The Station House Officer of Jogbani Police Station, District-Araria-The Seizing Authority.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Sanjay Kumar Sharma, Advocate
For the Respondent/s : Mr.Kumar Manish (S.C. 5)

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):-

1. By way of this writ application being filed invoking the extraordinary discretionary writ jurisdiction of this Hon'ble Court as enshrined under Article 226 of the Constitution of India, 1950, the sole petitioner, named above, most humbly seeks indulgence of this Hon'ble Court by praying *inter alia* as under: -

- a. To quash and set aside the order dated 11.12.2021 passed in Excise Revision No. 174/2021 (Md. Israfil Vs. Excise Commissioner and Others as contained in Annexure- P/9 whereby and whereunder the excise revision application was rejected by the Respondent No. 1 (Revisional Authority).
- b. To quash and set aside the order dated 26.7.2021 passed in Excise Confiscation Appeal No. 383 of 2021 by the Excise Commissioner, Bihar, Patna (Appellate Authority) as contained in Annexure—P/8 in the matter of Md. Israfil Vs. Collector, Araria and Others dismissing the excise appeal of this petitioner,
- c. To quash and set aside the order dated 8 December 2020 passed in Confiscation Case No. 467 of 2020 under Section 58 of the Prohibition Law (*State Versus Md. Israfil Son of Md. Sakur*) by the Collector, Araria (the Confiscating Authority) as contained in Annexure- P/7 whereby and whereunder the Tempo [Bajaj Maxima-Diesel] of this petitioner bearing Registration No. BR38P-3938 [Engine No. BBYWKB94029 and Chassis No. MD2A95AY2KWB15319] seized in connection with Jogbani Police Station Case No. 209 of 2019

dated 23 July 2019 instituted under Sections 30 (a)/38 (i) of the Bihar Prohibition and Excise Act, 2016 was directed to be confiscated after rejecting the show cause reply filed by the petitioner.

- d. This petitioner also seeks for a direction upon the respondents to forthwith release the vehicle of this petitioner which is a Tempo [Bajaj Maxima-Diesel] bearing Registration No. BR38P-3938 [Engine No. BBYWKB94029 and Chassis No. MD2A95AY2KWB15319] with due cost and compensation inasmuch as the vehicle has been unnecessarily kept in the police station premises since 23 July 2019 and the petitioner has suffered on daily basis.
- e. The petitioner also prays for interim relief by praying inter alia for not disposing of the vehicle in question either by way of auction or otherwise and not to create any third-party rights during the pendency of the instant revision.
- f. To direct for payment of cost of this litigation.
- g. Any other relief or relief(s) which the petitioner may be found entitled to in the facts and circumstances of the case.

Petitioner claims to be the owner of the seized vehicle.

Allegation is recovery of 18.6 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	