

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3687 of 2022

=====

Mohammad Basim Akram @ Mohammad Wasim Akram @ Wasim Akram,
S/o Abdul Quddus @ Abdul Kudush, R/o Mohalla-Damodarpur Kanti, P.S.-
Kanti, District-Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Excise Department, Bihar, Patna.
2. The Divisional Commissioner, Excise Department, Bihar, Patna.
3. The District Magistrate, Gopalganj.
4. The Superintendent of Police, Gopalganj.
5. The S.H.O. Balthari Police Station, Gopalganj.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr.Md. Harun Quareshi
For the Respondent/s : Mr.Vivek Prasad (Gp 7)

=====

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 05-05-2022

Heard learned counsel for the parties.

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

- a. To quash the order dated 09/02/2022 passed in Excise revision no. 18/2022 whereby and whereunder the vehicle in question owned by the petitioner is allowed to be released upon payment of 50% of the insurance value of the vehicle as non-refundable penalty. However, the proceeding of the trial court remaining continue. In other word it may be said that during



pendency of the judicial proceeding, penalty has been imposed upon the petitioner which amount to double jeopardy.

b. To direct the respondents to release the vehicle of the petitioner in the light of order dated 01/12/2021 passed in C.W.J.C. No. 19228 of 2021 wherein in similar circumstances direction has been issued to release the vehicle pending the writ application for final hearing.

c. To grant any other relief-reliefs for which the petitioner is entitled under the facts and circumstances of the instant writ application.”

Briefly stated, the facts of the case is that petitioner is owner of the seized truck and same was used for transportation of goods and it is alleged by the Informant who is an Excise Officer that during checking of vehicles 8.800 litre of illicit liquor was recovered from the cabin of the Driver and thereafter the Truck and the illicit liquor were seized and Driver of the Truck Subodh Mandal was arrested. It is further stated in the FIR that 5 ml/disposable syringe with needles in 217 cartoons were also recovered from the said Truck.

It is submitted on behalf of petitioner that the Driver of the Truck confessed that he had purchased the country made liquor for his personal consumption and kept in the cabin and which suggests that petitioner had no knowledge about illicit



liquor being kept in his Truck and as such his vehicle was not liable for confiscation.

On the recommendation of Excise Superintendent, confiscation proceeding against the seized Truck of petitioner was initiated being Confiscation (Excise) Case No. 340 of 2021 by the learned Collector, Gopalganj, in which final order of confiscation was passed on 07.07.2021, however, it is submitted that no notice was served to the petitioner.

Petitioner preferred appeal before the Appellate Authority being Excise Appeal No. 536 of 2021 and the order passed by the Collector was set aside and the matter was remanded to the Court of District Collector, Gopalganj to hear the matter afresh, however, the learned Collector, by order dated 18.11.2021 passed order of confiscation of the vehicle without appreciating the submissions of petitioner.

Against the order passed by the Confiscating authority petitioner preferred, Revision before the learned Additional chief Secretary, Excise Department, Bihar, Patna, and by order dated 09.02.2022 the learned Revisional Authority, directed release of the Truck on payment of 50 per cent penalty of the insurance value of the vehicle as non refundable penalty.

It is the consistent case of petitioner that the Truck is



used for transportation of goods and the Driver of the Truck had admitted that the seized 8.800 litre of country made liquor was recovered from his Cabin which he had purchased for his personal consumption as such petitioner had given satisfactory account of the illicit liquor recovered and same was kept in the Truck without his knowledge or information, as such Truck of petitioner cannot be construed of having indulged in transportation of illicit liquor which required consideration by the Confiscating Authority. There is no discussion of any report of Chemical analyst in the impugned order certifying that the illicit liquor recovered is intoxicant. The amendment in the Excise Act/Rules were notified on 05.04.2022 by which Rule-12A was inserted in which provision was made for release of vehicle on payment of penalty, however, the learned Revisional Authority passed an order for release of vehicle on payment of penalty of 50 per cent of value of insured amount on 09.02.2022, when no such provision was in vogue/existence.

The procedure for confiscation of vehicles has been provided under Section 13B of Bihar Prohibition and Excise Rules, 2021 which has to be followed by the Confiscating Authority which reads as follows:-

“13B. Confiscation of vehicles, vessels or other conveyance.-

(i) The Collector, on receipt of proposal for



confiscation of any vehicle(s) or other conveyances from Police Officer/Excise Officer, shall issue show cause notice to owner of the said vehicle or the vessel or other conveyance.

(ii) Such notice issued by the Collector shall be served as per procedure prescribed in the Code of Criminal Procedure, 1973 for service of summons.

(iii) The Collector shall provide reasonable opportunity of hearing to the owner. The Investigating Officer/Inquiry officer shall also be given opportunity to participate in such hearing.

(iv) If, on the date fixed for hearing, the person(s) to whom the notice has validly been served fail(s) to appear in the proceeding on two consecutive dates fixed for hearing, the confiscating authority shall proceed to pass the order *ex parte*.

(v) The Collector, after hearing the parties, on satisfaction that an 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.

(vi) Any person aggrieved by the order passed by the Collector under the provisions of the Act may file appeal in the manner prescribed under these Rules.”

The Confiscating Authority shall also take into account insertion of Section 26A after sub section 26 of sub section 2 of Bihar Prohibition and Excise Act, 2016 which reads as follows:-

“(26A)“exhibit” means any document, record, object, photograph, animation or any other item having evidentiary value, which is required to be formally produced in a court of law, and includes such electronic images like videography, drone images etc of such document, record, object, photograph, animation or item.”

In said view of the matter, the order dated 09/02/2022 passed in Excise revision no. 18/2022 by learned Additional Chief Secretary, Bihar, Patna and order dated 18.11.2021 passed by the



learned Collector, Gopalganj in Confiscation (Excise) Case No. 340 of 2021 are set aside and the matter is remanded to the Collector, Gopalganj, to pass a fresh order in accordance with law and excise procedure Rules after granting reasonable opportunity to all the parties concerned.

However, it shall be open for the petitioner to avail the remedy under the amended Act/Rules to get his/her vehicle released on payment of penalty.

Accordingly, the writ petition is disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

K.C.Jha/-

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

