

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5070 of 2022

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Suresh Prasad Rai Son of Ram Bilas Rai Resident of Mohalla- Anoith
Krishna Nagar, Ward No.43, P.S.- Nawada Ara, District- Bhojpur.

... .. Petitioner/s

Versus

1. The State of Bihar through Additional Chief Secretary, Excise Department,
Bihar, Patna.
2. The Additional Chief Secretary, Patna.
3. The Commissioner, Prohibition and Excise, Government of Bihar, Patna.
4. The District Magistrate-cum-Collector, Purnea.
5. The Sub-Divisional Police Officer, Baisi, Purnea.
6. The Superintendent of Police, Purnea.
7. The Excise Superintendent of Police, Purnea.
8. The Station House Officer, Dagarua, Purnea.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Ms. Malti Kumari, Advocate
For the Respondent/s : Mr.Kumar Manish (SC5)

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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 : 06-05-2022

Heard learned counsel for the parties.

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

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(i) For issuance of writ/writs, order/orders, direction/directions in the nature of certiorari for quashing the order dated 20-11-21 passed in Excise Revision No. 217/2021 by Additional Chief Secretary (Respondent No.2) whereby and whereunder Bolero Pick up bearing Registration No. BR03G7265 of petitioner was directed to be confiscated by affirming the order passed by the Appellate Authority.

(ii) For issuance of appropriate writ/writs, order/orders, direction/directions for quashing the order dated 20-09-21 passed in Excise Appeal Case No. 587/2021 by the Respondent No.3 the Commissioner, contained in Memo No. 984 dated 20-09-21 whereby and whereunder confiscation order passed by District Magistrate (Respondent No. 4) with respect to Bolero Pick Up of petitioner has been affirmed and appeal preferred by petitioner has been dismissed.

(iii) For issuance of appropriate writ/writs, order/orders, direction/directions for quashing the order dated 09-07-2021 passed in Excise Case No. 120/2021 arising out of Dagarua P.S. Case No. 62/2021 registered under section 272, 272/34 of the Indian Penal Code and section ³⁰⁶ of Bihar Prohibition and Excise Act by Respondent Collector (Respondent No.4) whereby and whereunder Bolero Pickup Van of petitioner bearing Reg. No.

(iv) For issuance of appropriate writ/writs, order/orders, direction/directions commanding the Respondent authority to released the Bolero Pick Up Van of Petitioner bearing Reg.No. BR035-7265 in his favour by taking into consideration the fact that petitioner being a army personnel purchased a light commercial vehicle to ply in the State of Bihar and handed over the said vehicle to the driver. However said

vehicle was stolen and misused by some stranger regarding which F.I.R. was already instituted but without taking into consideration the story of theft of light commercial vehicle of petitioner have been directed to be confiscated.

(v) For issuance of appropriate writ/writ, order/orders, direction/directions for granting any other relief which the petitioner was found entitled in the eye of law and in the fact and circumstances of present case.

Petitioner claims to be the owner of the seized vehicle.

Allegation is recovery of 323.625 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 need so arises.

(Sanjay Karol, CJ)

(S. Kumar, J)

veena/rajiv-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	