IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8668 of 2021

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Rakesh Kumar Tiwari, S/o - Om Prakash Tiwari, H.No. 8-382/1 Manikya Nagar, Quthbullapur Near Sai Baba Temple Chintal, P.S. - Jeedimetla, District- Medchal Telangana at present R/o Village - Bandipur, P.S. - Ramgarh, District- Kaimur at Bhabua.

... ... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Additional Chief Secretary, Excise Department, Govt. of Bihar, Patna.
3. The Excise Commissioner, Head Quarter Bihar, Patna.
4. District Magistrate, Kaimur at Bhabua.
5. The Superintendent of Police, Kaimur at Bhabua.
6. The Oficer - In - Charge, P.S. - Kudra, District- Kaimur.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ashutosh Tripathy, Advocate

For the Respondent/s : Mr.Lalit Kishore, AG

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 11-05-2022

Heard learned counsel for the parties.

The petitioner has prayed for the following relief/s :

1. That this application is being filed for issuance of an appropriate writ / order / direction upon the respondents to release the vehicle (Motor Cab Maruti-Dzire Motor Car bearing Registration No.TS08UH-1977) in favour of the petitioner who is the owner of the vehicle which was seized by the police on 23.06.2020 in connection with Kudra P.S Case No. 190/2020 under the provisions of Bihar Prohibition of Excise Amendment Act 2018.

1/A. That the petitioner further prays for issuance of any other appropriate writ / order / direction for quashing the order dated 19.02.2021 passed by the learned Additional Chief Secretary, Bihar, Patna in Excise Revision Case No. 05/2021and the order dated 18.01.2021 passed by the learned Commissioner, Excise Bihar, Patna in Excise Appeal Case No. 176/2020 whereby and where under the Addl. Chief Secretary as well as Commissioner without looking the materials on record rejected the case of petitioner.

1/B That the petitioner also prays for issuance of any other appropriate writ / order / direction for quashing the order dated 28.09.2020 passed by the Collector Kaimur, passed in Excise Confiscation Case No. 164/2020 arising out of Kudra P.S Case No. 190/2020 by which the learned Collector ordered to confiscate the vehicle (Motor Cab Maruti- Dzire Motor Car bearing Registration No.TS08UH-1977.

1/C That the petitioner further prays for issuance of any other appropriate writ/order/direction to which he is found entitled to.

Petitioner claims to be the owner of the seized vehicle.

Allegation is recovery of 35.1 litre of illicit liquor from the seized motorcycle 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)

Ashwini/Sujit

AFR/NAFR	
CAV DATE	
Uploading Date	18.05.2022
Transmission Date	