

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7043 of 2022

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Rahul Midha Son of Shri Hargovind Midha, Resident of - K.N. Colony, Ratu Road, Ranchi, P.S. - Sukhdeo Nagar, District - Ranchi (Jharkhand) - 834001.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Prohibition Excise and Registration Department, Bihar, Patna.
2. The District Magistrate, Nawada.
3. The Superintendent of Excise, Nawada.
4. The Sub Inspector of Excise, Integrated Check Post, Rajauli, Nawada.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Prachi Pallavi, Adv
For the Respondent/s : Mr.Kumar Manish (Sc5)

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(The proceedings of the Court are being conducted by Hon'ble the Chief Justice /Hon'ble Judges through Video Conferencing from their residential offices/residences. Also, the Advocates and the Staffs joined the proceedings through Video Conferencing from their residences /offices.)

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 13-05-2022

Heard learned counsel for the parties.

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

“(i) Issuance of a writ of certiorari, quashing the ex- parte order of confiscation, passed by the District Magistrate cum Confiscating Authority in case NO. 403. (E) of 2021, by which the white Ecosport Titanium vehicle fo the petitioner bearing registration No. JH05CE4358, Engine No. JB77647, Chasis No. MAJAXXMRKAJB77647, has been confiscated and directed to be auction sold, on an alleged recovery of 3 bottles of beer (1.8 litres).

(ii) Direct the respondents to forthwith release the white Ecosport Titanium vehicle of the petitioner

bearing registration no. JH05CE 4358, Engine No. JB77647, Chasis No. MAJAXXMRKAJB77647.”

It has been submitted by learned counsel for the petitioner that final order of confiscation has been passed by the confiscating authority in Confiscation Case No. 403(E) of 2021 for confiscation of his vehicle without hearing him.

In view of the above, the writ petition is disposed with liberty to petitioner to file a petition for recall of *ex parte* order and if the confiscating authority comes to a finding on the basis of records that there was no proper and valid service of notice upon the petitioner, he may recall the *ex parte* order and shall pass a fresh order after affording opportunity to the petitioner to file his show cause and shall pass final order after hearing all the parties.

However, if the Confiscating Officer finds that in spite of valid service of notice, petitioner did not contest the proceeding, he shall dismiss the recall petition and petitioner shall have liberty to file appeal against the order of confiscation of land passed by the Confiscating Authority before the Appellate Authority, who shall decide the appeal in accordance with law.

During confiscation/Appellate proceeding,
confiscated property/vehicle shall not be auction sold.

OR

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) and 57(B) 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 of 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 the case.

With said observation and direction, this writ petition is disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

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