

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7504 of 2022

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Ranjay Kumar son of Ram Nandan Ram, Resident of Village-Bochaha
Karanpur North, P.O. and P.S.-Bochaha, District-Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The District Magistrate, Muzaffarpur.
3. The Confiscation Officer-cum-Additional Collector (Disaster Management),
Muzaffarpur.
4. The Senior Superintendent of Police, Muzaffarpur.
5. The Superintendent of Excise, Muzaffarpur.
6. The S.H.O., Sakra, P.S.-Sakra, District-Muzaffarpur.
7. Shri Anjar Allam Khan, The A.S.I., Sakra, P.S.-Sakra, District-Muzaffarpur
(Informant).

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Basant Kumar Tripathy, Advocate
For the Respondent/s : Mr.Vivek Prasad (Gp 7)

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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 : 08-07-2022

Heard learned counsel for the parties.

Petitioner has prayed for following relief:-

- (i) For issuance of a Writ in the nature of
Certiorari or any other appropriate Writ/
Writs, Order/Orders, Direction/ Directions

for quashing the Order dated 17.01.2022, passed by the Learned Court of Confiscation Officer-Cum-Addl. Collector (Disaster Management), Muzaffapur in Confiscation Case No.125/ 2021-2022, arising out of Sakra P.S. Case No.501/2021, registered U/Ss.147/148/149/188/342/332/333/307/353/504/506 I.P.C. and 30(a) of Bihar Liquor Prohibition & Excise (Amendment) Act, 2018, whereby and whereunder the vehicle of the petitioner Make Mahindra Bolero B4, bearing Registration No. BR06PE-9160 has been confiscated U/Ss. 13, 30(a) and 56 of the Bihar Liquor Prohibition and Excise act, 2016 and Order has been given to the Superintendent, Excise, Muzaffarpur that declaring the vehicle of the petitioner as Government property, will make auction of the vehicle

after completing the process of auction according to law.

- (ii) For issuance of a Writ in the nature of Mandamus or any other appropriate Writ/ Writs, Order/Orders, Direction/Directions for directing the respondent-authorities to release the vehicle of the petitioner.
- (iii) For any other relief or reliefs, the petitioner is found entitled to in the facts and circumstances of the case.

Petitioner has approached this Court without exhausting the statutory remedy of appeal against the impugned order, as such, petitioner is granted liberty to avail the remedy of appeal against the confiscation order passed by the Confiscating Authority- cum- Addl. District Magistrate, before the Appellate Authority and if any such appeal is filed within 4 weeks then appellate authority shall condone the delay in filing the appeal as the same remained pending before this Court and shall decide the appeal on its own merit preferably within 8 weeks from the date of its filing.

If appeal is filed within a period of four weeks, the

confiscated vehicle/property shall not be auction sold till disposal of the appeal/revision.

OR

It is submitted on behalf of 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) has 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.]”

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) 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)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.07.2022
Transmission Date	NA