

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12255 of 2021

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Vikash Kumar @ Vikash Paswan, Son of Late Rambadan Paswan, Resident
of- Sahebpur Kamal, P.S.- Sahebpur Kamal, District- Begusarai- 851217

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Prohibition
Excise and Registration Department, Bihar, Patna.
2. The Excise Commissioner, Prohibition Excise and Registration Department,
Bihar, Patna.
3. The District Magistrate, Khagaria.
4. The Additional Superintendent of Police, Khagaria.
5. The Officer-in- Charge, Mahesh Khoot Police Station, Khagaria.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Satyabir Bharti, 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 :-

“(i) Issuance of a writ of Certiorari or any
other appropriate writ(s), order(s) or direction(s),



quashing the order dated 15.06.2021, passed by the Additional Chief Secretary, Prohibition Excise & Registration Department, Bihar, Patna in Excise Revision No. 19/2021 upholding the impugned orders passed by the Collector, Khagaria and the Excise Commissioner, Bihar in Confiscation Case No. 382/2019-20 and Excise Appeal No. 29/2021 respectively by which the Scorpio vehicle of the petitioner bearing number BR34P-5464 has been confiscated and directed to be sold by way of public auction under Section 58(5) of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as the “Act”) (Annexure-P/7).

(ii) Issuance of a writ of certiorari or any other appropriate writ(s), order(s) or direction(s), quashing the Auction Notice No. 01/2021-22, by which the petitioner’s vehicle mentioned at serial no. 38 of the notice has been directed to be auction sold and direct the Respondent No.3, i.e., District Magistrate, Khagaria, not to proceed with the auction of the vehicle of the petitioner scheduled to be held on 8th of July, 2021 at 11 am, in terms of Public Notice No. 01/2021-22 (Annexure-P/8, pg 71).

(iii) To pass such other writ(s), order(s), direction(s) as your Lordships may deem fit and proper in the facts and circumstances of the case.”

Allegation is recovery of 88.200 litre of illicit liquor from the seized vehicle of the petitioner.

Petitioner claims to be the owner of the seized vehicle.



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 so arises.

(Sanjay Karol, CJ)

(S. Kumar, J)

Ashwini/Sujit

AFR/NAFR	
CAV DATE	
Uploading Date	18.05.2022
Transmission Date	

