

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15042 of 2021

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Nand Kishore Son of Mange Ram Resident of House No. 409, Deoli, Village-
Deoli, P.S.- Nebsarai South Delhi, Delhi- 110062 At present Resident of Ward
No. , Adarsh Nagar, Mohalla- Bargaw Road, Khekhra, P.S.- Baghpat, District-
Baghpat (U.P.) and owner of Bus No. UP-17AT-5345.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Additional Chief Secretary, Prohibition and Excise Department,
Government of Bihar, Patna.
3. The Commissioner, Prohibition and Excise, Government of Bihar, Patna.
4. The District Magistrate, Muzaffarpur.
5. The Senior Superintendent of Police, Muzaffarpur.
6. The Incharge of Ahiyapur Police Station in the District of Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rama Kant Sharma, Sr. Advocate
Mr.Lakshmi Kant Sharma, 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)

Date : 11-05-2022

Heard learned counsel for the parties.

The petitioner has prayed for the following
relief/s :-



- (i) For issuance of appropriate writ/writs order/orders, direction/directions for quashing of the order dated 29.06.2021 passed in Excise Revision Case no. 29/2021 contained in Memo no. 549 dated 29.06.2021 issued under the signature of respondent no. 2 (The Additional Chief Secretary) whereby and whereunder respondent no 2 affirmed the order of confiscation of bus bearing registration No. UP-17AT-5345 and also affirmed the appellate order passed by respondent no. 3 (The Commissioner) whereby order passed by original authority has been affirmed ignoring the fact that there is no material on record showing the complicity of petitioner (owner of the bus) in loading and unloading the contraband article and also ignored the fact that search and seizure was conducted by Assistant Sub-Inspector



of Police who is not competent to conduct the search and seizure and as such the process of search and seizure of bus in question is viciated in the eye of law and further also F.I.R. is also not sustainable in the eye of law.

A Copy of Memo no. 549 dated 29.06.2021 is annexed herewith and marked as Annexure-1 to this petition.

- (ii) For issuance of appropriate writ/writs, order/orders, direction/directions for quashing the order dated 23.09.2020 passed in Excise Appeal Case No. 65 of 2019 by Respondent no. 3 (The commissioner) whereby and whereunder respondent authorities affirmed the order passed by respondent no. 4 to confiscate the bus bearing registration no. UP-17AT-5345 in the name of petitioner which was plying from Laukaha, Madhubani to New Delhi and vice-versa by



ignoring the contention of petitioner that certain passenger duped the conductor and agent of the bus by producing a receipt showing spare parts of Maruti Car loaded few cartoons in the bus in course of return Journey from New Delhi to Laukaha, however incourse of unloading the cartoons from the bus at Muzaffarpur, an ASI who is not competent to conduct search and seizure, allowed the said passengers to go but apprehended the driver and cleaner of the bus and in this way without any fault on the part of Incharge person of bus, the same has been kept in the police-station in a case of carrying prohibited liquor and in this way owner of the bus in question put in a huge monetary loss, the appellate authority without applying the judicious mind, affirmed the order of Collector (respondent no. 4).

A Copy of the order dated
23.09.2020 passed in Excise



Appeal Case no. 65/2019 is
annexed herewith and marked
as Annexure-2 to this petition.

- (iii) For issuance of writ/writs, order/orders, direction/directions for quashing the order dated 17.08.2019 passed in Confiscation case no. 40/2019-20, arising out of Ahiyapur P.S. case no. 1078 of 2018 by learned District Magistrate, Muzaffarpur, whereby and whereundre the respondent District Magistrate directed to confiscate the seized bus bearing Registration No. UP-17AT-5345 as said vehicle was found laden with prohibited liquor in course of return journey from New Delhi to Laukaha and respondent District Magistrate without considering the fact that there is no material on record showing the connivance of the owner to put the prohibited liquor in question in question directed to confiscate the bus in question with a specific



direction to put the vehicle on auction sale within a month and submitted compliance report.

A Photo copy of order dated 17.08.2019 passed in Confiscation Case no. 40/2019-20 is annexed herewith and marked as Annexure-3 to this petition.

- (iv) For issuance of writ/writs, order/orders, direction/directions commanding the respondent authority to immediately release the bus bearing Registration No. UP-17AT-5345 in favour of the petitioner who is bonafide owner as he has valid documents relating to bus and only by taking into consideration the fact that the agent of the petitioner i.e. driver and cleaner relying upon the receipt and face of the cartoons which is packed in a Maruti Spare parts cartoon allowed the prohibited liquor concealed in that cartoon to be



loaded in the bus under good faith and the agents of the petitioner cheated by the strangers trapped in the cases. However, in course of raid those persons were allowed to flee by the police personnel who came to seize as police personnel who seized the prohibited article is not competent to conduct raid and as such whole proceeding is vitiated in the eyes of law.

- (v) For any other relief of reliefs for which petitioner is found entitled in the eyes of law and in the facts and circumstances of the present case.

Petitioner claims to be the owner of the seized vehicle.

Allegation is recovery of 247.93 litres of illicit Indian Made foreign 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 so arises.

(Sanjay Karol, CJ)

(S. Kumar, J)

Ashwini/Sujit

AFR/NAFR	
CAV DATE	
Uploading Date	18.05.2022
Transmission Date	

