

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11186 of 2022

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Aarti Devi Wife of Randhir Kumar @ Randhir Kumar Mishra (D/o Shambhoo Kumar Roy Resident of Village- Mahathhour, Ward No. 13 Purwari Tola, Police Station- Ghanshyampur, District- Darbhanga (Bihar).

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Prohibition and Excise, Government of Bihar, Patna.
2. The Principal Secretary, Department of Prohibition and Excise - cum -Revisional Authority, Government of Bihar, Patna.
3. The Commissioner, Department of Prohibition and Excise - cum - Appellate Authority, Government of Bihar, Patna.
4. The Collector-cum-District Magistrate/Authorized Officer, Darbhanga, District- Darbhanga.
5. The Senior Superintendent of Police, Darbhanga, District- Darbhanga.
6. The Superintendent of Excise, Darbhanga, District- Darbhanga.
7. Thana Adhyaksha/Officer-in-Charge, Police Station- Ghanshyampur, District- Darbhanga.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Gajendra Kumar Jha, Advocate
For the Respondent/s : Mr.Kumar Manish (SC- 5)

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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 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.)

Date : 05-08-2022

Heard learned counsel for the parties.

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

- (i) That this is an application for issuance of an appropriate writ, order or direction for quashing the order dated 03.03.2022 (Annexure-14) passed by the respondent No.2 the Principal Secretary, Department of Prohibition and Excise, Government of Bihar, Patna, in Excise (Confiscation) Revision No.272 of 2021 whereby and where under the Learned Secretary-cum-Revisional Authority has been pleased to dismiss the Revision Case filed by the petitioner against the Final Order dated 05.10.2021 (Annexure-9) passed by the Learned Commissioner-cum-Appellate Authority (Respondent No.3) whereby and where under the Learned Appellate Authority dismissed the Excise Appeal Case No.615/2021 and declined to interfere with the order of Confiscation dated 05.07.2021 in Excise Confiscation Case No.165 of 2020 (Annexure-8) arising out of Ghnshyampur P.S. Case No.173 of 2019 dated 02.09.2019 whereby Petitioner's

Vehicle Pick-up Van bearing Registration No.-BR-07 GB-0369 (Light Goods Carrier) in question was ordered to be confiscated.

(ii) And for further order or direction for setting aside the auction notice dated 12.01.2021 (Annexure-12) and sale of Petitioner's Vehicle Pick-up in question dated 03.02.2022 by the respondent Nos. 3 and 5 made during the pendency of Revision Case No. 272/2021, Collusively even having knowledge already given by the petitioner about the pendency of revision case.

(iii) And for direction to release the petitioner's vehicle (Pick-up Van) bearing Registration No.B.R-07 GB-0369 (light goods carrier) in favour of the petitioner, with condition and adequate sureties as may deem appropriate by this Hon'ble Court.

And/or Pass such order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

Briefly stated, the facts of the case is that Informant who is a police officer in his written complaint has alleged that on 01.09.2019, at about 10:30 pm while he was on night patrolling duty along with other police personnel, when he received an information that one TATA 407 Pick-up van loaded with illicit liquor is coming towards Ghanshyampur village and when he reached said place, he saw said Pick-up van coming

and upon seeing the police the Driver of the vehicle and three persons sitting on the vehicle started fleeing, however, one person was nabbed and other two managed to escape and the apprehended person disclosed his name as well as name of other two persons who fled away and on search of vehicle, 1467.360 litre of illicit liquor was recovered and seized in presence of two independent witnesses and thereafter vehicle was seized and apprehended person was arrested giving rise to Ghanshyampur P.S Case No. 173 of 19 dated 02.09.2019 under section 30(A) of Bihar Prohibition and Excise Act, 2016.

On recommendation dated 29.07.2020 by the Sr. Superintendent of Police, Darbhanga, confiscation proceeding was initiated against seized vehicle and notices were issued to the owner of the seized vehicle Aarti Devi, who submitted her show cause, in which it was stated that the Pickup Van was purchased from the loan provided by the Bank and petitioner had given the Pick-up van to Pramod Mahato on rent by a written agreement dated 25.08.2019. Petitioner has no information or knowledge that illicit liquor was being transported from her vehicle.

The District Magistrate cum confiscating Authority by his order dated 05.07.2021 passed in Confiscation Case No. 165

of 2020 passed the order of confiscation of the vehicle. Appeal preferred before the Excise Commissioner being Excise Appeal No. 615 of 2021 was dismissed by the appellate authority by order dated 05.10.2021. Revision preferred before the Revisional Authority was dismissed on 03.03.2022 passed in Excise Revision No. 272 of 2021, against which present writ petition has been filed.

Petitioner has not disputed recovery of 1467.360 litre of illicit liquor from her Pick-up Van. Her defence is that she had no knowledge or information that person to whom she had let her vehicle on rent is engaged in the transportation of illicit liquor.

The report dated 13.09.2019 of chemical analyst proved that seized illicit liquor was intoxicant. Once the recovery has been admitted by the petitioner from her vehicle presumption is that offence under Excise Act, has been committed and the vehicle becomes liable for confiscation and onus shifts upon the owner of the vehicle to account satisfactorily for recovered illicit liquor, however, such burden has not been discharged by the petitioner and once it is established that huge quantity of illicit liquor has been recovered from the vehicle of petitioner, the vehicle is liable to

be confiscated, unless the owner of the vehicle proves that it was so used without her knowledge or connivance and she had taken all reasonable precaution against such use. However, it appears that no evidence was produced on behalf of petitioner to establish that her vehicle was used for transportation of illicit liquor without her knowledge or connivance and she had taken all reasonable precaution against such use.

After hearing learned counsel for the petitioner as well as learned counsel for the State, this court does not find any error or infirmity in the impugned order requiring any interference by this Court in its discretionary writ jurisdiction.

Accordingly, the writ petition is dismissed.

(Sanjay Karol, CJ)

(S. Kumar, J)

veena/ranjan-

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