IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16890 of 2021

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Md Shaukat Ansari @ Shaukat Ansari @ Saukat, S/o Md Moti Ansari, R/o - Vill / Mohalla - Barioul P.S. - Kamtaul Distt - Darbhanga.

... ... Petitioner/s

Versus

1. The State of Bihar through, principal secretary, Govt. of Bihar, Patna.
2. The Additional Chief Secretary, Gov of Bihar, Patna.
3. The Commissioner Excise, Bihar, Patna.
4. The Collector cum District Magistrate, Darbhanga.
5. The S.P. Excise Department Darbhanga.
6. The Superintendent of Police, Darbhanga.
7. The Sub Inspector, Excise, Mobile team Dist - Darbhanga.
8. The Branch Manager, Chotamandalam Investment and Finance. Co. Ltd. Darbhanga, Distt - Darbhanga.
9. Samrat Bihari S/O Ram Suraj R/O Vill - Gopalpur P.s. Kamtaul Distt-Darbhanga.
10. Kamal Chaupal S/o Bhuttu Chaupal R/O Vill - Gopalpur P.S. Kamtaul Distt-Darbhanga.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Kedar Jha, 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 THE CHIEF JUSTICE)

Date : 11-05-2022

Heard learned counsel for the parties.

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

> "i. For issuance of a writ in the nature of certiorari for setting aside the order dated

20.07.2021 passed by the learned Additional Chief Secretary, Bihar, Patna in Excise Revision no. 40/2021 whereby and whereunder the Excise Revision filed by the petitioner was illegally and arbitrary rejected by holding the order dated 6.10.2022 passed by the learned District Collector, Darbhanga in Excise Confiscation case no. 173/2020 and appellate order dated 12.2.2021 passed by the learned Excise Commissioner in Excise Appeal case no. 192/2020 do not suffer from any illegality. Further for setting aside the appellate order dated 12.02.2021 passed by the learned Excise Commissioner in Excise Appeal Case no. 192/2020 as well as the order dated 6.10.2020 passed by the learned District Collector, Darbhanga in Excise Confiscation case No. 173/2020.

ii. For issuance of direction upon the respondent no. 4 releasing the vehicle Mahindra Supro mini van bearing registration no. BR07PB-8112 having Chassis no MA1FV2VARJ6K32093 engine no VAJ6K48939 in favour of the petitioner.

iii. For issuance of any other order/orders/relief/reliefs for which the petitioner is found to be entitled in the facts and circumstances of the case."

Allegation is recovery of 360 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	