

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13395 of 2022

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Chandrama Choudhary son of Late Mirchand Choudhary @ Mirchandra Choudhary, Resident of Village Ward No. 24, Idilpur, Police Station - Bardhman Sadar, District- East Bardhman (West Bengal).

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
2. The Additional Chief Secretary, Registration, Excise and Prohibition Department, Bihar, Patna.
3. The Excise Commissioner, Government of Bihar, Patna.
4. The District Magistrate- cum-Collector, Araria.
5. The Senior Superintendent of Police, Araria.
6. The Excise Superintendent, Araria.
7. The Officer-in-Charge, Jokihat Police Station, District- Araria.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Nilendu Kumar Choudhary, Advocate
For the Respondent/s : Mr.Vikash Kumar (S.C.11)

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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 : 09-09-2022

Heard learned counsel for the parties.

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

1. That this present writ application is being filed

for issuance of appropriate writ/writs, order/orders for setting aside the orders dated- 06.05.2022 passed in Excise Revision No.- 116 of 2022 by the learned Additional Chief Secretary, Registration, Excise and Prohibition Department, Bihar, Patna whereby and whereunder the revision application filed against the order dated- 01.02.2022 passed in Excise Appeal Case No.- 64 of 2022 by the learned Excise Commissioner, Bihar, Patna, has been rejected and upheld the said order as well as the order dated- 05.08.2021 passed in Excise Confiscation Case No.- 144 of 2021, 24 of 2021-22 by the learned Land Reforms Deputy Collector, Araria, by which the confiscation proceeding with respect to the Vehicle (truck) of the petitioner bearing Registration No.- WB-41H-5145 having Engine No.- 61H84331491 and Chassis No.- MAT466429GHH11674 which was seized by the Police Official, Araria in connection with Jokihat P.S. Case No. 66 of 2021 which has been registered for offence under sections 30(a) of the Bihar Prohibition and Excise Act, 2016 has been concluded and the vehicle of the petitioner has been

confiscated has also been confirmed and further for issuance of direction to the respondent authorities to hand over the seized Vehicle (Truck) of the petitioner in his favour and/or for any other relief or reliefs to which the petitioner may be found entitled to in course of hearing of this writ application.

Briefly stated the facts of the case is that on specific information that huge quantity of illicit liquor is being transported by truck bearing registration No.WE-41H-5145, the Excise Inspector, along with other excise personnel stopped the vehicle and on search of vehicle, 2653.74 litre of Indian made foreign liquor was recovered which was concealed beneath the bamboos. The recovered liquor and the vehicle were seized and 5 persons including driver and owner (petitioner) sitting in the truck were arrested. Seizure list was prepared and case was handed over to S.H.O., Jokihat. FIR was registered giving rise to Jokihat P.S. Case No.66 of 2021 under Section 30(a) of the Excise Act.

On recommendation made by the police, confiscation case being Confiscation Case No.144 / 2021 / 24-21-22 was instituted and notices were issued to petitioner and he submitted

his show cause stating therein that he was not aware that beneath the bamboos, illicit liquor has been kept.

As petitioner was also sitting in the vehicle from which huge quantity of illicit liquor was recovered, as such, it cannot be believed that he had no knowledge or information about the illicit liquor being kept in his truck.

From FIR, seizure memo and chemical analyst report, it is established that illicit liquor was being transported from said truck.

According to Section 58 of the Excise Act, 2016, the District Collector, if satisfied, that an offence under this Act has been committed, can order confiscation of such vehicle.

Under Section 32 of the Excise Act, there is presumption as to commission of offences in certain cases, which reads as follows:-

“32. Presumption as to commission of offence in certain cases. -

(1) In prosecution of an offence under this Act, the accused person would have to account for the possession of any liquor, intoxicant, material, utensil, implement or apparatus involved in manufacture or storage of such liquor.

(2) In the event of a failure to offer a satisfactory explanation, there shall be a presumption that the accused person is guilty of the commission of such offence, unless proved otherwise.

(3) Where any equipment, machinery, animal, vessel, cart, vehicle, conveyance or any premises are used in the commission of an offence under this Act, and are liable to confiscation and/or liable to be sealed, the owner

or occupier thereof would need to account satisfactorily, and in the absence of a satisfactory explanation the presumption that accused person committed the offence shall arise, unless proved otherwise.”

In present case, petitioner, who is owner of the vehicle, could not give satisfactory explanation with respect to illicit liquor kept in his vehicle, as such, there is presumption that offence under the Excise Act has been committed. However, such presumption is with respect to commission of offence under Excise Act for prosecution of the accused and there is no such presumption in confiscation proceeding.

Once recovery of illicit liquor from the vehicle of the petitioner is established through FIR, seizure memo and chemical analyst report, onus shifts upon the petitioner to establish that, he had no information or knowledge of illicit liquor being kept in the truck.

Under such circumstances, onus was on the owner of the vehicle that the illicit liquor was kept in his vehicle without his connivance, consent or knowledge and he took all reasonable care and precautions and offence was committed without his knowledge or connivance.

In present case, since petitioner, who is the owner of the vehicle, was himself sitting in the vehicle along with other accused and was apprehended from the truck, it can be inferred that he had knowledge and information about the illicit liquor

being carried in his vehicle. Owner of the vehicle could not substantiate his contention to the satisfaction of confiscating authority that he had no knowledge and he had taken all reasonable precautions against such use of his vehicle for transporting the illicit liquor.

There has been recovery of huge quantity of illicit liquor from the vehicle and from FIR also, it is apparent that police had prior information about illicit liquor being carried on the vehicle of petitioner.

Under such circumstances, this Court does not find any error or infirmity in the order passed by the confiscating authorities requiring any interference by this Court in its discretionary writ jurisdiction, accordingly, this writ petition is dismissed.

(Sanjay Karol, CJ)

(S. Kumar, J)

veena/rajiv-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	