

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18508 of 2021

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Rakesh Kumar Singh Son of Raj Kishore Singh Resident of Village- Sirsa
Ram Rai, P.S.- Lalganj, Dist- Vaishali.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Excise, Bihar, Patna.
2. The Collector cum District Magistrate, Vaishali at Hajipur.
3. The Superintendent of Excise, Vaishali at Hajipur.
4. The Superintendent of Police, Vaishali at Hajipur.
5. The Station Head Officer, Goraul Police Station, Dist- Vaishali.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anil Kumar, Advocate
For the Respondent/s : Mr. Vivek Prasad, GP-7

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 12-05-2022

Heard learned counsel for the parties.

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

1. That this is an application for issuance of an appropriate writ(s), order(s) in the nature of certiorari for setting aside the order dated 25.3.2021 passed by the Dist.



Collector , Vaishali in Confiscation case no. 17/2021 whereby and where under Swift Dezire car bearing registration no. BR31X-0746 which has been seized and confiscated in connection with Bidupur P.s. case no. 273/2020 due to violation of the Excise Act in which without hearing the side of the petitioner , the respondent on 25.03.2021 prior to the date fixed for hearing the side of the petitioner which is prior to the date fixed for hearing i.e. 26.3.2021 and confiscated the car of the petitioner , which itself is violation of the principal of natural Justice and barred by the law.

And for any other relief(s) the petitioner is sought to be entitled for.

It has been submitted by learned counsel for the petitioner that the respondents sent a notice in Confiscation Case No. 17/2021 for appearance of the petitioner on 26.03.2021. However, the Confiscating Authority has passed the impugned order of confiscation on 25.03.2021, i.e., one day prior to the date fixed for appearance in Confiscation Case No. 05/2020-21, directing for confiscation of his Swift Dezire Car bearing Registration No. BR31X-0746.

In view of the above, we quash the order dated 25.03.2021 passed in Confiscation Case No. 05/2020-21



(Annexure-4).

The writ petition is disposed with liberty to petitioner to appear before the Confiscating Authority/District Magistrate, Vaishali on 23.05.2022 at 10:30 A.M., whereafter the said authority shall proceed with the matter and pass a fresh reasoned order within a period of ninety days from the date of appearance of the petitioner, of course after affording opportunity to the petitioner to file his show cause as also after hearing all the parties.

Also, if aggrieved by the confiscation order, petitioner shall have liberty to file appeal against the said order before the Appellate Authority, who shall decide the appeal in accordance with law.

During confiscation/Appellate proceeding, confiscated property/vehicle shall not be auction sold.

OR

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) has 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.]”**

In view of amendment in the Excise Act, and same being applicable in pending cases, it shall be open for the petitioner to get his/her vehicle released in terms



of Rule 12(A) inserted by amending Bihar Prohibition
and Excise Rules, 2021.

(Sanjay Karol, CJ)

(S. Kumar, J)

P.K.P./Amrendra

AFR/NAFR	
CAV DATE	
Uploading Date	16.05.2022
Transmission Date	

