IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18975 of 2021

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Ashok Kumar Singh Son of Chandradeo Singh Resident of Rajiv Nagar, Road No.-14, Ward No.- 16, P.S.- Rajiv Nagar, Dist- Patna.

... ... Petitioner/s

Versus

1. The State of Bihar through Additional Chief Secretary, Excise Dept. Bihar, Patna.
2. The Commissioner (Excise), Patna.
3. The District Magistrate, Nalanda, Dist- Nalanda.
4. The Additional Collector-cum-Additional District Magistrate, Nalanda.
5. The Superintendent of Police, District- Nalanda.
6. The Station House Officer, P.S.- Giriyak, Dist- Nalanda.

... ... Respondent/s

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(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.)

Appearance :

For the Petitioner/s	:	Mr.Kulanand Jha, Adv
For the Respondent/s	:	Mr.Vivek Prasad (GP7)

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

Date : 01-04-2022

Heard learned counsel for the parties.

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

> "A. A writ in the nature of certiorari for quashing the order dated 31.08.2021 passed by the ld. Additional Chief Secretary, Bihar, Patna, by which he has dismissed the Revision being Excise Revision No. 99 of 2021 and has approved the order dated 22.02.2021 passed by the ld. Excise Commissioner in Excise Appeal No. 90 of 2021.
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> B. A writ in the nature of certiorari for quashing the order dated 22.02.2021 passed by the ld. Court of

> Commissioner, Excise by which the ld. Commissioner Exise has dismissed the case being Excise Appeal Case No. 90 of 2021 and has approved the order dated 9.1.2021 passed by the ld. Addl. Collector Cum Addl. District Magistrate, Nalanda in confiscation case no. 23 of 2021.
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> C. For a writ in the nature of certiorari quashing the order dated 09.01.2021 passed by the ld. Court of Addl. District Collector cum Addl. District Magistrate, Nalanda in Confiscation Case No. 23 of 2021 by which the ld. Addl. District Collector cum Addl. District Magistrate has directed the Superintendent Excise, Nalanda to process the auction sale of seized vehicle.
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> D. For a writ in the nature of mandamus commanding the respondents to release the Maruti Suzuki Dezire car bearing its Registration No. BR-01CR-1548 which registered in the name of the petitioner and the said vehicle is seized in connection with Giriyak P.S. Case No. 425 of 2020 under Section 30(a) and section 37(b)(c) of the Bihar Excise Act, 2016 pending before the Special Judge, Excise for trial."

Petitioner claims to be the owner of the seized vehicle.

Allegation is recovery of 720 ml of illicit liquor from the seized vehicle of the petitioner.

It is further submitted that a meagre quantity of 720 ml of liquor has been recovered from the vehicle, as such, it cannot be construed that the vehicle was used for transporting/carrying illicit liquor.

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.
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> 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.
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> (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.
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> 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.
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> (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 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) 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)

ranjan/-

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