

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19499 of 2021

=====

Tara Devi W/o - Ramvriksh Chaudhary R/o Mohalla - Teacher Colony,
Ramchandrapur, P.S. - Laheri, District- Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Bihar, Patna Cum Adhikchhak Madhanishedh (Mukhyalay) Bihar, Patna.
2. The Additional Chief Secretary, Bihar, Patna Cum Adhikchhak Madyanishedh (Mukhyalay) Bihar, Patna.
3. The Excise Commissioner, Bihar, Patna.
4. The District Magistrate cum Collector, Nalanda at Biharsharif.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr.Dheeraj Kumar, Adv
For the Respondent/s : Mr.Kumar Manish (Sc5)

=====

(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.)

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):-

“(i) For the issuance of an appropriate writ to quash the order dated 4.3.2021 passed by the Respondent No. 4 in Confiscation Case No. 92/2021 arising out of Rajgir P.S. Case No. 43/2021 dated 6.2.2021 registered U/S 30 (a) of Bihar Prohibition and Excise Act, 2016 whereby the Learned Collector for Nalanda has been pleased to confiscate the Toyota (Innova Car) of Petitioner bearing Registration No. DL4CAE- 7034 seized by the Police in above said Rajgir P.S. Case No. 43/2021 and is the subject matter of Confiscation proceeding in confiscation No. 92/2021.

(A copy of order dated 4.3.2021 contained in Annexure-2).

(ii) For the issuance of an appropriate writ to quash the order dated 16.4.2021 passed by the Respondent No.3 in Excise Appeal No. 300/2021 whereby the Learned Commissioner Excise Bihar, Patna has been declared to dismiss the above stated excise Appeal No. 300/2021 preferred by the petitioner against the order Respondent No.4 dated 4.3.2021 and has been further pleased to confirm the said order.

(C.C. of order dated 16.4.2021 contained in Annexure-3).

(iii) For the issuance of an appropriate writ to quash the order dated 5.8.2021 passed by the Respondent No.2 in Excise Revision No. 61/2021 dismissing the revision filed by the petitioner against the order dated 4.3.2021 in confiscation case No. 92/2021 and the order dated 16.4.2021 in Excise Appeal No. 300/2021 holding no illegality in the above said order.

(C.C. of order dated 5.8.2021 contained in Annexure-4).

(iv) For the issuance of the appropriate writ holding the entire exercise of the Respondents under few grab of confiscation and the order of confiscating the petitioner vehicle are illegal and bad in the eye of law.

(v) For the issuance of an appropriate writ/direction to the respondents, specially to the respondents No.4 to release the Vehicle of the petitioner bearing Reg. No. DL4CAE-7034 Toyota (Innova Car) seized in Rajgir P.S. Case No.43/2021 in favour of the petitioner.”

Petitioner claims to be the owner of the seized vehicle.

Allegation is recovery of 2.100 of illicit liquor from the seized vehicle of the petitioner.

It is further submitted that a meagre quantity of 2.100 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 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 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