IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20057 of 2021

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Mahendra Choudhary @ Mahendra Kumar, Son of Basudev Choudhary @ Basant Choudhary @ Basudev Choudhry Resident of Village- Jarmakhap, P.S.- Town, District- Aurangabad.

... ... Petitioner/s

Versus

1. The State of Bihar through The Additional Chief Secretary, Prohibition and Excise, Govt. of Bihar, Patna.
2. The Commissioner, Prohibition and Excise, Govt. of Bihar, Patna.
3. The District Magistrate, Aurangabad, Bihar.
4. The Senior Superintendent of Police, Aurangabad, Bihar.
5. The Station House Officer, Town Police Station, District- Aurangabad.
6. The Superintendent Excise, Aurangabad, Bihar.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Santosh Kumar Pandey, 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 : 01-04-2022

Heard learned counsel for the parties.

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

> "(i) For issuance of appropriate writ/writs, order/orders, direction/directions for quashing of the order passed in Excise Revision Case No. 69 of 2021 contained in Memo No. 787 dated 10.08.2021 by respondent no. 1 The Additional Chief Secretary whereby and whereunder Revisional Authority affirmed the order of Respondent Collector and Appellate order passed by Respondent No. 2 to confiscate the vehicle Indigo Car bearing Registration No. BR-01BJ-0668 without considering the fact that the illicit liquor keeping in his vehicle, at the time of occurrence, no one was present there and vehicle in question was parked

near the house under Pipal Tree where contraband articles was put in by someone else.

(ii) For issuance of appropriate writ/writs, order/orders, direction/directions for quashing the order dated 23.02.2021 passed by respondent no. 2 (The Commissioner) in Excise Appeal No. 119 of 2021 and communicated to the petitioner vide Memo No. 297 dated 23.02.2021 whereby and whereunder order passed by the Respondent District Magistrate (Respondent No. 3) by invoking the power under Section 58 read with Section 56(C) of Bihar Prohibition and Excise Act has been affirmed and vehicle of the petitioner has been directed to be confiscated and dismissed the appeal.

(iii) For issuance of appropriate writ/writs, order/orders, direction/directions for quashing the order dated 22.12.2020 passed by Respondent No. 3 in Excise Vehicle Confiscation Case No. 42 of 2020/729 of 2020 whereby and whereunder vehicle of the petitioner has been directed to be confiscated on account of recovery of liquor in the alleged vehicle and institution of Town P.S. Case No. 394 of 2019 dated 08.10.2019 ignoring the facts that petitioner was not on the place of occurrence.

(iv) For issuance of appropriate writ/writs, order/orders, direction/directions for commanding the respondent authorities specially the Respondent No. 3 not to confiscate the vehicle of the petitioner as same was misused by the driver without knowledge of the petitioner and any criminal liability is a personal liability and may not be penalized for criminal act done by some other person and not misused by anyone hence criminal liability cannot be fixed upon petitioner and as per Section 32 of the Act, presumption as to commission of offence is rebuttable presumption, subject to giving satisfactory explanation and in the case, since no material was found regarding connivance of petitioner and as such presumption of complicity of the petitioner has already been rebutted and respondent may drop the confiscation proceeding instead of passing of order of confiscation.

(v) For issuance of appropriate writ/writs, order/orders, direction/directions for any other relief/reliefs for which the petitioner is found entitiled in the eye of law and in the facts and circumstances of the present case."

Petitioner claims to be the owner of the seized vehicle.

Allegation is recovery of 1.6 litre of illicit liquor from the seized vehicle of the petitioner.

It is further submitted that a meagre quantity of 1.6 litre 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 on behalf of 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.

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)

veena/rajiv-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	