IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20166 of 2021

Pawan Kumar Singh, son of Law Kush Singh resident of Village Nonar, Post Chhewari, P.S. Ramgarh, District Kaimur (Bhabhua).

... ... Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary-cum- Principal Secretary, Excise Department, Government of Bihar, Patna.
2. The Excise Commissioner, Excise Department, Govt. of Bihar, Patna.
3. The District Magistrate-cum- Collector, District Kaimur, at Bhabhua.
4. The Excise Superintendent, Kaimur at Bhabhua.
5. The Superintendent of Police, District Kaimur at Bhabhua.
6. The Station House Officer (S.H.O.), Ramgarh Police Station, District Kaimur, at Bhabhua.

... ... Respondent/s

Appearance :

For the Petitioner/s : Mr. Dharmesh Kumar Shrivastava, Advocate

For the Respondent/s : Mr.Vikash Kumar, SC 11

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

Date : 11-05-2022

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

> "A) A writ in the nature of Certiorari or any other appropriate writ/s, order/s, direction/s quashing for the following:
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> i) The order dated 29.06.2021 passed in Excise Revision No. 26/2021 by Additional Chief Secretary-cum-Principal Secretary, Excise Department, Govt. of Bihar, Patna held that the impugned confiscation order passed by

learned Collector, Kaimur, Bhabhua and appellate Order passed by learned Excise Commissioner do not suffer from any illegaly.

ii) The order dated 21.12.2020 passed in Excise (Confiscation) Appeal No. 48/2020 by Excise Commissioner, Bihar, Patna whereby the Court of Excise Commissioner refused to allow the appeal of the appellant/petitioner u/s 92(2) of Bihar Prohibition and Excise (Amendment) Act, 2018.

iii) The order dated 13.02.2020 passed by District Magistrate, Kaimur, Bhabhua in Vehicle Confiscation (Excise) Case No. 192/19 arising out of Ramgarh P.S.Case No. 207 of 2019, confiscating the Apachi motorcycle bearing registration no. BR-24Z-1702, Chasis No. MD637AE7972LB9167, Engine No. AE7LJ23B3490 and directing the Excise Superintendent, Kaimur (Bhabhua) to auction the said vehicle and deposit the auction amount in the treasury.

B) A writ in the nature of Mandamus or any other appropriate writ/s, order/s, direction/s commanding the respondents for the following:

I) To hold the order/decision contained in Annexure-3, 4 & 5 to the petition to be nullity and non-est in the eye of law.

ii) To stay the auction proceeding of the aforesaid vehicle of the petitioner.

iii) To grant ad-interim relief to release the aforesaid vehicle of the petitioner in question in favour of the petitioner, during pendency of this writ petition.

C) To any other relief/reliefs to which the petitioner is found entitled too."

Allegation is recovery of 8.85 litre of illicit liquor from the seized vehicle of the petitioner.

Petitioner claims to be the owner of the seized vehicle.

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) as well as 57B have 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.
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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.
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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.
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> (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.]

57B-Things or premises liable to be released upon penalty-

(1) Any animal, vehicle, vessel or other conveyance used for committing any offence punishable under this Act that has been seized by any police Officer or Excise Officer may be released by the Collector upon payment of such penalty as may be notified by the State Government.

(2) Any premises or part thereof used for committing any offence punishable under this Act that has been seized by any police Officer or Excise Officer may be released by the Collector upon payment of such penalty as may be notified by the State Government.

(3) If the person concerned does not pay the penalty, then the Collector shall proceed to confiscate the said animal, vehicle, vessel or other conveyance and premises as per section-58.

[Explanation 1: It shall not be a right of the accused to get his conveyance, item or premises released upon payment of the required penalty. The Collector, based upon a report by a police Officer or an Excise Officer, may, for reasons to be recorded in writing, still refuse to release the said conveyance, item or premises and proceed ahead with confiscation and auction/destruction.]

[Explanation 2: The Collector shall, from the date of this Amendment coming into force, close the on-going confiscation proceeding if the person concerned pays the penalty as notified and release such vehicle, conveyance or premises.]

[Explanation 3: Such release shall not affect the outcome of trial, if any, before the Special Court.]**"**

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) and 57B 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)

Ashwini/Sujit

AFR/NAFR	
CAV DATE	
Uploading Date	18.05.2022
Transmission Date	