

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20737 of 2021

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Deepak Kumar Son of Sri Ravi Kant Sharma, Residing at Madhepura, Ward
No. 20, P.S. and District-Madhepura.

... .. Petitioner/s

Versus

1. The State of Bihar through Director General of Police, Government of Bihar, Patna.
2. The Director General of Police, Government of Bihar, Patna.
3. The Commissioner Excise Dept. Govt. of Bihar, Patna.
4. The District Magistrate, Madhepura, District-Madhepura.
5. The Addl. Collector-cum-Addl. District Magistrate, Madhepura, District-Madhepura.
6. The Excise Superintendent, Madhepura, District-Madhepura.
7. The Officer in Charge of Police Station Madhepura, District-Madhepura.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Sharda Nand Mishra, Advocate
For the Respondent/s : Mr.Kumar Manish (SC-5)

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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 further quashing the order dated 06.09.2021 passed in Excise Confiscation Case No.61/2021 by Addl. Collector-Cum-Addl.District Magistrate, Madhepura by which Confiscation the Tempoo bearing Registration No.BR-43GA-1957 of petitioner and directed to made auction without giving any opportunity to petitioner.
- ii) For further issue direction for releasing the tempoo bearing Registration No.BR-43GA-1957 seized in Madhepura P.S Case No.38/2021 to the petitioner as he is ready to furnish surety for release .
- iii) For further give other legal consequential benefit to the petitioner .

Petitioner has approached this Court without exhausting the statutory remedy of appeal against the impugned order, as such, petitioner is granted liberty to avail the remedy of appeal against the confiscation order passed by the Confiscating Authority- cum- District Magistrate, before the Appellate Authority and if any such appeal is filed within 4 weeks then appellate authority shall condone the delay in filing the appeal and shall decide the appeal on its own merit preferably within 8 weeks from the date of its filing.

During pendency of appeal, the confiscated property/ vehicle shall not be auction sold, if not already 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 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.

With aforesaid observation and direction, the writ petition stands disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

veena/rajiv-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	