

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21394 of 2021

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Ashutosh Sharma son of Krishna Sharma resident of D- 393, Barra- 8,
Kanpur Nagar, District- Kanpur (U.P.) Pin Code- 208027... .. Petitioner/s
Versus

1. The State of Bihar through the Additional Chief Secretary, Prohibition, Excise and Registration Department, Bihar, Patna
2. Excise Commissioner, Bihar, Patna
3. District Magistrate, Kaimur (Bhabhua)
4. Excise Superintendent, Kaimur (Bhabhua)

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Abhinav Srivastava, Advocate
For the Respondent/s : Mr.Kumar Manish (Sc5)

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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 following reliefs:-

- (i) Issuance of a direction, order or writ, including writ in the nature of certiorari quashing the order dated 25/11/2021 passed by the Additional Chief Secretary, Prohibition, Excise & Registration Department of the State Government in Excise Revision No. 210/2021, by which the revision petition filed by the petitioner against the order dated 05/03/2021 passed by the Excise Commissioner in Excise Appeal Case No. 163/2021 and order dated 04/02/2021 passed by the Collector, Kaimur in Confiscation Case No. 122/2020 has been rejected;
- (ii) Issuance of a direction, order or writ, including writ in the nature of certiorari quashing the order dated 05/03/2021 passed by the Excise Commissioner, Bihar, Patna in Excise Appeal Case No. 163/2021, rejecting the appeal preferred by the petitioner against

the order dated 04/02/2021 passed by the Court of Collector-cum District Magistrate, Kaimur (Bhabhua) in Excise (Vehicle Confiscation) Case No. 122/2020 for confiscation and auction of the vehicle of Swift Dzire make bearing registration no. UP 14 DD 3929 belonging to the petitioner has been passed;

- (iii) Issuance of a direction, order or writ, including writ in the nature of certiorari quashing the order dated 04/02/2021 passed by the learned Court of Collector-cum-District Magistrate, Kaimur (Bhabhua) and Excise (Vehicle Confiscation) Case No. 122/2020, by which it has been ordered that the vehicle of Swift Dzire make bearing registration no. UP 14 DD 3929 belonging to the petitioner be auctioned in terms of the provisions contained under the Bihar Prohibition & Excise Act, 2016 within a period of two months and the proceeds of the auction be deposited in the District Treasury, District Magistrate, Kaimur (Bhabhua);
- (iv) Issuance of a direction, order or writ, including writ in the nature of mandamus commanding the concerned respondent authorities to release the vehicle Swift Dzire make bearing registration no. UP 14 DD 3929 belonging to the petitioner and hand over the possession to the same to the petitioner who is the lawful owner of the said vehicle;
- (v) Any other relief that the petitioner may be found to be entitled to in the facts and circumstances of the present case.

Petitioner claims to be the owner of the seized vehicle.

Allegation is recovery of 950 ml. of illicit liquor from the seized car of the petitioner.

It is further submitted that a meagre quantity of 950 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 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.

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)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.04.2022
Transmission Date	NA