

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18514 of 2017

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Vivek Bhushan Jha S/o Dr. Kameshwar Jha r/o Village Umari, P.S. Lakhnour,
District Madhubani.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Collector, Muzaffarpur.
3. The Senior Superintendent of Police, District Muzaffarpur.
4. The Superintendent of Police, District Muzaffarpur.
5. Excise Commissioner, Bihar, Patna.
6. S.H.O., Ahiyapur Police Station, District Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Harsh Singh
For the Respondent/s : Mr.Vikash Kumar -Sc11

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

Date : 12-05-2022

Heard learned counsel for the parties.

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

“a. For passing an appropriate writ, order or direction declaring the provisions of Sections 57, 58, 60 & 61 of the Bihar Prohibition & Excise Act, 2016(hereinafter referred to as the Act) as ultra vires the constitution in so far as the provisions vest the power of confiscation in an executive authority viz., the Collectgor and bars the jurisdiction of the Courts in respect of confiscation under the Act.

b. For passing a writ in the nature of mandamus or an order, direction or injunction restraining the respondents from giving effect to or implementing the provisions of Sections 57, 58, 60 & 61 of the Act.

c. For passing a writ in the nature of mandamus or an order, direction or injunction restraining the Respondents from acting upon the order dated 23.10.2017



passed in Confiscation Case No. 169/2017-18 arising out of Ahiyapur P.S. Case No. 698 of 2017 by the Collector, Muzaffarpur in exercise of power under section 58 of the Act wherey the Grand-I10 car of the petitioner bearing registration number BR01DB-6094 has been confiscated and directed to be auctioned.

d. For passing a writ in the nature of certiorari for calling for the records of Confiscation Case No. 169/2017-18 arising out of Ahiyapur P.S. Case No. 698/2017 and quashing the order dated 23.10.2017 passed by the Collector, Muzaffarpur in exercise of powers under section 58 of the Act.

e. Consequentially, for passing a writ in the nature of Mandamus or any other writ order or direction commanding the Respondent authorities to release Grand I10 car of the petitioner bearing registration number BR01DB-6094 confiscated vide order dated 23.10.2017 passed in Confiscation Case No. 169/2017-18 arising out of Ahiyapur P.S. Case No. 698/2017 by the Collector, Muzaffarpur, exercise of power under section 58 of the Act in favour of the petitioner.

f. For an ad interim order or direction directing the respondents to release Grand I10 car of the petitioner bearing registration number BR01DB-6094 confiscated vide order dated 23.10.2017 passed in Confiscation Case NO. 169/2017-18 arising out of Ahiyapur P.S Case No. 698 of 2017, by the Collector, Muzaffarpur in exercise of powers under section 58 of the Act during the pendency of the writ application.”

Allegation is recovery of 375 ml of illicit liquor from the vehicle of petitioner and vehicle was being driven in a drunken condition as a result of which vehicle was seized giving rise to Ahiyapur P.S. Case No. 698 of 2017 dated 19.02.2017 under section 272, 273 of IPC and Section 30(a) of Bihar Prohibition and Excise Act.

On the basis of recommendation of Senior



Superintendent of Police, Muzaffarpur, confiscation proceeding being confiscation no. 169/2017-18 was initiated against the seized vehicle and by order dated 23.10.2017, the seized vehicle was confiscated by the order passed by the District Collector cum Confiscating Authority, Muzaffarpur, and the vehicle was directed to be auction sold.

Against the order dated 23.10.2017, petitioner preferred CWJC No. 15814 of 2017 and by order dated 19.12.2017, there was provisional release of the confiscated vehicle and at present the vehicle is in possession of petitioner.

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) and 57(B) 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.



(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.]



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 of 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 the case.



Equally, liberty reserved to petitioner to approach this Court for same and subsequent cause of action, if so arises.

With said observation and direction, this writ petition is disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Ashwini/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.05.2022
Transmission Date	NA

