IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2324 of 2023

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Bipul Ghosh, S/o Bhawani Ghosh, R/o Villa. - Indrapalli, Kadam Talla, Shiv Mandir, P.S. - Nazalbari, District- Darjeeling (West Bengal).

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Excise and Registration, Govt. of Bihar, Patna.
2. The Chief Secretary, Govt. of Bihar, Excise and Registration Department, Patna.
3. The Excise Commissioner, Excise, Patna.
4. The District Magistrate Araria.
5. The SHO, Bairgachi Police Station, Araria.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Nishant Kumar Sinha, Advocate
For the Respondent/s : Mr. Vikash Kumar, SC-11

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 18-05-2023

1. The petitioner is aggrieved with the confiscation of his vehicle and auction sale.

2. The petitioner's vehicle was intercepted and 645 litres of illicit was recovered from the vehicle. The vehicle was a Pickup Van bearing Registration No. WB-73F-1725, Chassis No. TBK4D606178, Engine No. MAIZTBKK6E26398. An FIR was registered on 01.01.2022 as Araria (Bairgachi) P.S. Case No. 02 of 2020 under Sections 30(a) and 38 of the Bihar Prohibition and Excise Act (hereinafter referred to as "Act").

The confiscation order was passed on 16.01.2021 in Confiscation Case No. 466 of 2020. An appeal was filed in which there was a remand ordered on 11.03.2022 in Excise Appeal Case No. 113 of 2022 and an application was filed by the petitioner under Rule 12A of the Bihar Prohibition and Excise Rules (hereinafter referred to as "Rules"). On 19.10.2022, Annexure-3 order was passed asking the petitioner to remit Rs. 45,000/-, being 50 percent of the insured value. The petitioner remitted it, as is evident from Annexure-3 but the vehicle was not handed over. Later it has come in a notice of the authority that the vehicle was auctioned on 17.08.2021.

3. Learned counsel for the petitioner submits that the vehicle has to be returned to him, he having complied with the order under Rule 12A of the Rules. It is also submitted that on the alternative, the amounts in auction sale has to be returned to him along with the amounts deposited under the order dated 19.10.2022.

4. We have to specifically observe that the vehicle was carrying 645 litres of illicit liquor, clearly an offence under the Act. The vehicle was confiscated on 16.01.2021 but the appeal was filed only on 11.02.2022. It was in the meanwhile i.e. in the one year period that the vehicle was sold on

17.08.2021, that too about 7 months after the order of confiscation. The petitioner has not participated in the confiscation case despite notices issued to him by newspaper publication.

5. In fact, the learned counsel for the petitioner has an explanation that no appeal was filed due to the pandemic and the Hon’ble Supreme Court had lifted the limitation applicable.

6. It has to be noticed that the vehicle was in the possession of the confiscating authority for 7 months. The vehicle is a Pickup Van and definitely the owner would have enquired about the whereabouts of the van when it was not found. Despite the pandemic situation having not been completely mitigated, there was no lockdown as such and the petitioner had ample time to file an appeal before the authority. The fact that an appeal was filed after more than 1 year restraints us from granting any order as sought for by the petitioner. It is not the question of limitation that arises here, but the sale of the vehicle, after reasonable time from the confiscation.

7. We have to notice that the confiscation proceedings on remand resulted in an order under Rule 12A of the Rules, which was not proper since the vehicle was already sold. The confiscating authority ought to have enquired whether the

vehicle is still in the possession of the seizing authority, before such order was passed. The petitioner also has paid Rs. 45,000/- as on 19.10.2022. In such circumstances, we direct that the amount of Rs. 45,000/- remitted by the petitioner, shall be returned with 5 percent interest starting from 19.10.2022 to the date of payment, at any rate within a period of 1 month from the date of this judgment. There is no reason to return the vehicle to the petitioner or even the sale proceeds since admittedly it was seized with a large quantity of contraband, intended presumably for sale within the State, where there is prohibition in force. Confiscation is a consequence of the Act, for its contravention and the petitioner having not alertly agitated his cause, there is no question of reversing such consequence and the resultant sale.

8. Writ application would stand disposed of with the above directions.

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

shashank/-

AFR/NAFR	NAFR
CAV DATE	NA
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