

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1932 of 2023

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Brajkishor Singh @ Brajesh Kishore Singh S/o Late Nagnarayan Singh
Resident of Village Dudha, P.O.- Dhokraha, P.S.- Majhauiliya, Bettiah
District-West Champaran, Bihar.

... .. Petitioner

Versus

1. The State of Bihar through the Secretary, Prohibition, Excise and Registration Department, Government of Bihar.
2. The Excise Commissioner, Prohibition, Excise and Registration Department, Government of Bihar.
3. The District Magistrate, Gopalganj.
4. The Superintendent of Police, Gopalganj.
5. The Officer in Charge, Police Station- Jadopur, Gopalganj.

... .. Respondents

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Appearance :

For the Petitioner : Mr. Rishabh Mishra, Advocate
For the State : Mr. Vikash Kumar, SC-11

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE MADHURESH PRASAD)

2 04-04-2023 Heard learned counsel for the petitioner and learned
counsel for the State.

2. On alleged recovery of 80 liters illicit liquor from a
motorcycle, the same was seized. First Information Report
('FIR' for brevity) bearing Jadopur PS Case No. 10 of 2021
was lodged for the alleged offences under Sections 30 (a)(b) and
(c) of the Bihar Prohibition and Excise Act, 2016 ('Act' for
brevity).

3. The writ petitioner claims to be owner of the



motorcycle, which was stolen on 02-01-2021, for which, he claims to have lodged *Bettiah Nagar* PS Case No. 04/2021 on 03-01-2021.

4. Learned counsel for the petitioner submits that the petitioner is not an accused in the FIR. He has no knowledge about recovery of any liquor from the motorcycle in-question. He has denied any knowledge regarding auction sale or otherwise of the motorcycle in-question and has sought quashing of the Confiscation order dated 07-07-2021 passed by the District Collector-cum-District Magistrate, Gopalganj, in Confiscation (Excise) Case No. 418/2021.

5. Referring to the order passed by the Confiscating Authority, learned counsel for the State submits that notice was issued in name of the instant petitioner in two Hindi daily newspapers, namely, '*Hindustan*' and '*Prabhat Khabar*', during the Confiscation proceedings. The petitioner has chosen not to appear. He also has not filed any application for release of the motorcycle. Petitioner has also not availed the remedy of appeal against the impugned order dated 07-07-2021. Section 92 of the Act read with Rule 20 of the Bihar Prohibition and Excise Rules 2021 provides the remedy of appeal.

6. This Court would find that there is no dispute that the



petitioner has not exhausted any statutory remedy. In his writ petition, he has stated about filing a petition for release of the motorcycle before the Confiscating Authority, copy of which has been enclosed as Annexure-4. There is no averment in the writ petition as to on what date the application for release was filed. The alleged date of filing of the petition (Annexure-4) can also not be deciphered from perusal of Annexure-4, wherein, there is cutting and overwriting over the dates inscribed making it impossible to ascertain the same.

7. It is not clear when the petition for release was filed, if at all the same was filed. From the writ petition, it is also obvious that petitioner has not availed any statutory remedy whatsoever against seizure/confiscation of his motorcycle. The petitioner has not even stated the date of seizure of the motorcycle in connection with *Jadipur* PS Case No. 10 of 2021. Whether the same was prior to alleged lodging of *Bettiah Nagar* PS Case No. 04/2021, dated 03-01-2021, by the petitioner, or not cannot be ascertained from the averments in the writ petition.

8. The writ petition, therefore, suffers from insufficiency of pleading and material. The writ petition apart from suffering from vice of insufficiency of pleading and material also suffers



from delay and latches, inasmuch as there is no justification from the averments in the writ petition for invoking writ jurisdiction in February, 2023 for release of the motorcycle and for setting aside of the impugned order dated 07-07-2021 passed in Confiscation (Excise) Case No. 418 of 2021. The writ petition is, thus, dismissed. Other remedies, if available to the petitioner in accordance with law, may be availed of.

9. This order may not be taken as an expression of opinion on merits of the petitioner’s claim for release of the motorcycle in-question.

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

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