**IN THE HIGH COURT OF JUDICATURE AT PATNA**
**Civil Writ Jurisdiction Case No.9347 of 2021**

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Ganesh Prasad, son of Kishori Saw, resident of Baeri Bagicha, Begumpur, P.S.-Malsalami, District-Patna-800009.

... ... Petitioner

Versus

1. The State of Bihar through Principal Secretary, Excise Department, Govt. of Bihar, Patna.
2. The Principal Secretary, Excise Department, Government of Bihar, Patna.
3. The Excise Commissioner, Govt. of Bihar, Patna.
4. The District Magistrate cum Collector, Patna.
5. The Deputy Collector, Patna.
6. The Superintendent of Police, Patna.
7. The Officer-in-Charge, Malsalami Police Station, Patna.
8. The Investigation Officer, Malsalami Police Station, P.S. Case No. 01 of 2020, P.S.-Malsalami, District-Patna.
9. Shashi Bhushan Singh S/o Parshuram Singh Resident of village- Bhabua P.S Ara, Dist- Bhojpur, Bihar.

... ... Respondent/s

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**Appearance :**

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| For the Petitioner/s | : | Mr. P.C. Agrawal, Advocate |
| | | Mr.Alok Kumar Jha, Advocate |
| For the State | : | Mr. Vivek Prasad, G.P.7 |
| | | Ms. Supragya, AC to GP-7 |
| | | Ms. Roona, AC to GP-7 |
| | | Mr. Sanjay Kumar, AC to G.P.7 |
| | | Mrs. Manisha Singh, AC to GP-7 |

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**CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI**
**and**
**HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA**
**ORAL JUDGMENT**
**(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)**

**Date : 06-12-2023**

In the instant petition, petitioner has prayed for the following relief(s):

*"a) For issuance of writ in the nature of certiorari for quashing of the impugned order*

*dated 23.02.2021 passed by the respondent number 2 in Excise Revision Case No. 02 of 2021;*

*b) For issuance of a writ or order or direction in the nature of mandamus to the respondent authorities to release the seized Mahindra Bolero pick-up vehicle of the petitioner bearing registration number Mahindra Bolero BR01GG-3765;*

*c) For issuance of a writ or order or direction restraining the respondent department from not taking any coercive action against the seized vehicle;*

*d) For issuance of writ or order or direction to the respondent department to restrain to not to put the Bolero Pick – up vehicle bearing registration no. BR-01-GG-3765 on auction sale during the pendency of the petition;*

*e) For grant of any other relief or reliefs to which the petitioner is found entitled in the facts and circumstances of this case."*

**2.** On an earlier occasion, petitioner had filed C.W.J.C. No. 4768 of 2020 in which he had sought for release of the motor vehicle registration No. BR-01GG-3765 (Mahindra Bolero Pickup), which was seized on 01.01.2020 in Malsalami P.S. Case No. 01 of 2020 by the Officer-in-Charge of Malsalami Police Station for the offences under Section 30(a) of Bihar Prohibition of Excise (Amendment) Act, 2018 (for short Act).

This Court disposed of the petitioner's writ petition while directing the petitioner to appear before the appropriate authority on 04th August, 2020 at 10.30 A.M. Due to Covid -19, petitioner could not appear on the date fixed by this Court. On the other hand, he had appeared only on 15.09.2020, the date on which the confiscation proceedings was concluded. Thereafter, he had preferred Appeal & Revision in which proceedings, he has suffered orders on 22.12.2020 and 23.02.2021. In this backdrop, the petitioner has presented this petition. During the pendency of Revision Petition, the official respondent proceeded to auction the subject matter of motor vehicle on 21.01.2021 and realized a sum of Rs. 5,15,000/-.

**3.** Learned counsel for the petitioner submitted that if he fails to appear on 04th August, 2020 at 10.30 A.M., the concerned authority should have issued a notice for next date for appearance, while taking note of the fact that Covid-19 was in vogue, thus petitioner has been denied the benefit of appearance in the confiscation proceedings. Further, it was pointed out that having regard to the seizure of the motor vehicle on 01.01.2020 followed by report communicated to the District Magistrate on 15.02.2020 and its disposal of confiscation proceedings dated 15.09.2020 there is a delay in conclusion of confiscation proceedings. Under Section 58 of the Act, 2016, Confiscation Authority was required to decide the confiscation proceeding within a reasonable period of time. The over all time taken by the confiscation proceedings is more than seven months from the date of receipt of report from the jurisdiction Police authority on 15.02.2020 pursuant to the seizure of the vehicle dated 01.01.2020. It is also submitted that 1.80 litre of liquor was seized for which the official respondent cannot auction the subject matter of motor vehicle and realize the auction amount of Rs. 5.15 lakhs.

**4.** It is also submitted that during the pendency of the proceedings State Government have introduced Bihar Prohibition and Excise Rules, 2021, (amended) Rules 2022 and (amended) Rules 2023, respectively. Rule 12-A is in respect of seizure of motor vehicle and imposition of penalty etc. The maximum penalty is a sum of Rs. Five Lakhs. Having regard to the quantum of liquor seized is 1.80 litre & indirectly imposing penalty of Rs. 5.15 Lakh would be too harsh and arbitrary.

**5.** *Per contra*, learned counsel for the respondent resisted the aforementioned contentions and submitted that having regard to the provisions of the Bihar Prohibition and Excise Act, 2016, Bihar Prohibition of Excise (Amendment)

Act, 2018 read with Bihar Prohibition and Excise Rules, 2021, amended Rules 2022 and 2023, the Rules are not applicable to the case in hand having regard to the date of offence is 01.01.2020 and Confiscation proceedings and Appellate Authority's order are dated 15.09.2020 and 22.12.2020, respectively, therefore, Rules introduced in the year 2021 has no application, consequently there are no infirmities in all the three proceedings undertaken by the competent authority in Confiscation, Appeal and Revision, hence, no interference is called for.

**6.** Heard learned counsel for the respective parties.

**7.** Undisputed facts are that subject matter of motor vehicle of the petitioner was involved in Malsalami P.S. Case No. 01 of 2020 for the offence under Section 30(a) of Bihar Prohibition of Excise (Amendment) Act, 2018. This Court had directed the petitioner to appear before the appropriate authority on 04th August, 2020 at 10.30 A.M. He could not appear for the reasons that Covid-19 was in vogue. Therefore, he had appeared on 15.09.2020, the date on which the confiscation proceedings were concluded. In all fairness, District Magistrate should have provided ample opportunity of petitioner's appearance with reference to the fact that Covid-19 was in vogue. On the other hand, he has proceeded without providing opportunity of hearing to the petitioner. Further, it is to be noticed that in terms of Section 58 of the Bihar Prohibition and Excise Act, 2016, the District Magistrate was required to decide the Confiscation proceedings within a reasonable period of time as held by Courts from time to time in the absence of time limit stipulated in the statue.

**8.** Further, we have noticed that District Magistrate, for concluding the confiscation proceedings, has taken seven months from the date of receipt of the report of the Police vide report dated 15.02.2020. In other words, he had ample time of seven months to hear the petitioner. Merely he fails to appear on 4th August, 2020 at 10.30 A.M. the District Magistrate failed to provide opportunity to the petitioner. Further, petitioner has suffered an order before the Appellate Authority and Revisional Authority and subject matter of motor vehicle was auctioned and an amount of Rs. 5.15 Lakh has been realized by the Excise Department. In this backdrop, what remains is whether imposition of penalty of confiscation of motor vehicle and auctioning the same and realizing the amount of Rs. 5.15 Lakh is fair or not. It is arbitrary for the simple reason that 1.80 litre of liquor has been seized for which imposition of indirect penalty of Rs. 5.15 Lakh would be too harsh. No doubt as on 15.09.2020, there were no provisions for imposition of penalty other than seizure of the motor vehicle and auctioning the same and realizing the auction amount. Whereas Section 61 of Bihar Prohibition and Excise Act, 2016 deals with confiscated articles to vest with the Collector. Section 61 of the Act reads as under:

> ***"61. Confiscated articles to vest with the Collector.-*** *When an order for confiscation of any property has been passed under Section 58 and such order has become final in respect of the whole or any portion of such property, such property or portion thereof, as the case may be, shall vest with the State Government free from any encumbrance."*

**9.** Reading of Sub-Section 5 of Section 58 & Section 61, resorting confiscated motor vehicle in auction may not be correct. In other words if huge quantity of liquor is seized in such manner auction of motor vehicle may be warranted. The State Government had realized implications in not identifying the penalty in the Excise Act and proceeded to provide imposition of penalty Clause under Bihar Prohibition and Excise Rules, 2021 in which the maximum penalty is a sum of Rs. Five Lakh. If the same yardstick is taken into consideration for the purpose of reducing the burden on the petitioner, we are of the opinion that seizure of 1.80 litre of liquor, penalty would be a sum of Rs. One Lakh would suffice. In fact, Writ Court has no jurisdiction to determine the penalty. Having regard to the fact that Bihar Prohibition and Excise Act, 2016 as on 15.09.2020, the date of confiscation proceedings have been concluded. There are no penal clause except seizure of the vehicle and auction. Auction of motor vehicle under Section 58 (5) & reading of Section 61 they are over laping each one. We are posing hypothetical questions for ourselves, suppose a two wheeler was involved in transportation of liquor to the extent of same quantity, in that event, if the subject matter of two wheeler is auctioned and realized a sum of rupees less than one lakh in that event there would be discrimination insofar as proceedings of confiscation and realization of auction amount. Therefore, we are compell to interfere with the indirect penalty imposed on the petitioner to the extent of Rs. 5.15 Lakhs with reference to realization of auction amount.

**10.** Therefore, the confiscation proceedings is treated to the extent of imposition of penalty of Rs. One lakh would suffice and remaining Rs. 4.15 Lakh shall be released in favour of the owner of the subject matter of motor vehicle after due verification like identification and other materials. The concerned authority is hereby directed to issue Demand Draft in favour of the owner of the subject matter of the motor vehicle under acknowledgment. The above exercise shall be completed within a period of four months from the date of receipt of this order. The Confiscation Proceedings, Appeal and Revision orders are modified to the above extent.

**11.** With the above observation, writ petition is allowed in part.

**(P. B. Bajanthri, J)**

**( Ramesh Chand Malviya, J)**

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| **AFR/NAFR** | NAFR |
| **CAV DATE** | 12.12.2023 |
| **Uploading Date** | N.A |
| **Transmission Date** | N.A |