IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6300 of 2022

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Kanhaiya Sah Son of Late Ganga Sah, Resident of Village - Dhanauti Math, Police Station- Dhanauti, District - Siwan.

... ... Petitioner/s

Versus

1. The State of Bihar.
2. The Additional Chief Secretary, Department of Excise, Government of Bihar, Patna.
3. The Excise Commissioner, Government of Bihar, Patna.
4. The District Magistrate, Buxar.
5. The Sub Divisional Magistrate, Buxar Sadar, Buxar.
6. The Superintendent of Police, Buxar.
7. The Station House Officer, Industrial Police Station, Buxar.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Chandra Shekhar Singh, Advocate Mr. Naresh Prasad, Advocate
For the Respondent/s	:	Mr. Kumar Manish (SC-5)

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 18-08-2023

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

> *"1. (i) For quashing the penalty part of order dated 26.01.2022, passed by respondent no. 2 in Excise Revision Case No. 297 of 2021, whereby he has imposed penalty to deposit 50% of insurance value of the vehicle as non refundable penalty to release of the confiscate vehicle, because the is illegal and beyond same jurisdiction.*
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> *(ii) For holding and declaring that imposition of penalty to pay 50% of insurance value*

of the vehicle for release thereof which was confiscated in vide order dated 03.08.2021, passed by Learned Sub Divisional Magistrate, Buxar Sadar, Buxar in Confiscation Case No. 23 of 2021 / 82 of 2021 in connection with Buxar Industrial P.S. Case No. 12 of 2021 is bad and illegal.

(iii) Further prays for issuance of direction to release the vehicle in question in favour of the petitioner, who is Owner of the vehicle as vehicle cannot be held liable for confiscation as per provision of section 56 of Bihar Prohibition of Excise Act, 2016.

(iv) For any other relief / reliefs to which the petitioner is found and entitled in the facts circumstances of the case."

2. The petitioner's motor vehicle (*Bolero*) bearing Registration No. BR-29X-6315 (four wheeler) is the subject matter of alleged offences under the Excise Act. In this regard, an F.I.R. was registered on 25.01.2021. Thereafter, confiscation proceedings were drawn on 03.08.2021 and it was against the petitioner. Further, it was the subject matter of litigation before the Appellate and Revisional authority, in which petitioner suffered order on 09.11.2021 and 24.01.2022 respectively. In this backdrop, the present petition is filed for quashing of the penalty part of order dated 26.01.2022 passed by the respondent No. 2 in Excise Revision Case No. 297 of 2021 and further seeking declaration that the penalty was illegal and so also for release of the subject matter - the motor vehicle.

3. Learned counsel for the petitioner submitted that from the reading of the F.I.R., there is no element of

transportation of liquor, on the other hand, liquor was consumed. The same has not been taken note of by the three authorities, namely, Confiscating authority, Appellate authority and Revisional authority. The authorities have presumed that liquor was being transported. In this regard, there is no material evidence. In fact, F.I.R. must have disclosed if the petitioner was transporting liquor, on the other hand, F.I.R. is silent in respect of transportation of any liquor. Therefore, one has to draw inference that subject matter of motor vehicle is not involved in transportation of liquor so as to confiscate the subject matter of vehicle and proceed for auction on 18.02.2022.

4. It is further submitted that official respondents have filed counter affidavit in the month of July, 2022. In para Nos. 7 & 14, they have not disclosed the fact relating to disposal of seized motor vehicle by means of auction on 18.02.2022. In other words, they have suppressed the material information. The same is being rectified through filing supplementary affidavit, in which they have disclosed the auction of the subject matter of motor vehicle on 18.02.2022.

5. Per contra, learned counsel for the respondents resisted the aforesaid contentions and submitted that parallel proceedings have been initiated. If the petitioner suffered in criminal proceedings, in that event, he is not entitled to release of the vehicle or compensation with reference to subject matter of confiscation proceedings and consequential proceedings including auction.

6. Heard the learned counsel for the respective parties.

7. Undisputed facts are that the petitioner's motor vehicle was involved in F.I.R. registered on 25.01.2021 for the offences under Sections 30(A) & 37(B) of the Excise Act, in Buxar Industrial P.S. Case No. 12 of 2021. The respondents have proceeded with the confiscation proceedings and it was concluded on 03.08.2021 against the petitioner and it was affirmed by the next higher authorities, namely, Appellate and Revisional authority on 09.11.2021 & 24.01.2022 respectively. Revisional authority has given an option of payment of 50% of the valued insured vehicle. However, the petitioner has not resorted to in paying 50%, on the other hand, he has filed the present writ petition, questioning the portion of the order of the Revisional authority and sought for declaration as well as release of the vehicle. Perusal of the F.I.R. read with three proceedings, namely, Confiscation, Appellate & Revisional authorities, it is noticed that there is no *iota* of evidence that the liquor was transported by the petitioner in the subject matter of

motor vehicle. On the other hand, Confiscating authority presumed that the petitioner must have utilized the motor vehicle for transportation of liquor. Such findings or recordings in the Confiscation proceedings is in the absence of material evidence. The same has not been appreciated by the Appellate authority as well as Revisional authority.

8. Learned counsel for the respondent submitted that criminal proceedings is pending consideration. If such proceeding results in conviction of the petitioner, he would undergo sentence and will be liable to pay fine and it all depends on outcome of the criminal proceedings. Such proceedings has nothing to do with the subject matter of motor vehicle which was confiscated and auctioned. Therefore, the criminal proceedings' pendency would not be a hurdle insofar as the payment of compensation in view of the fact that subject matter of motor vehicle is not involved in transporting the liquor. On the other hand, liquor was being consumed as is apparent in the light of F.I.R. Therefore, the concerned authorities are hereby directed to pay the petitioner, auction amount along with 6% interest, for the reasons that subject matter of motor vehicle is not involved in transportation of liquor. That apart, the respondents have not approached this

Court with a clean hand while filing counter affidavit in the month of July, 2022 and they have not disclosed the auction proceedings of the subject matter of motor vehicle on 18.02.2022. Thereafter, by virtue of this Court's order, they have filed a supplementary affidavit stating that subject matter of motor vehicle was auctioned on 18.02.2022. The auction amount along with 6% interest shall be paid to the petitioner within a period of three (3) months from the date of receipt of this order, failing which the petitioner is entitled to litigation cost and it is quantified @ Rs. 50,000/-. Cost shall be paid to the petitioner.

9. Accordingly, present writ petition stands allowed.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

shoaib/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.08.2023.
Transmission Date	NA