

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.1707 of 2021

In
Civil Writ Jurisdiction Case No.3703 of 2021

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Deepak Kumar Son of Wakil Ray, Resident of Village-Ramjee Chak, Digha Nahar Par, P.S.-Digha, District-Patna.

... .. Petitioner

Versus

1. The State of Bihar, through Sri Chairanya Prasad S/o Not Known to the Petitioner, the Principal Secretary Excise and Prohibition Department, Govt. of Bihar, Patna.
2. Dr. Nilesh Ramchandra Deore S/o not Known the Petitioner, The District Magistrate Cum Collector, Saran.
3. Sri Ravindra Kumar, S/o not Known to the Petitioner, The Deputy Inspector General of Police, Saran.
4. Sri Santosh Kumar, S/o Not Known to the Petitioner, The Officer-in-Charge, Police Station-Manjhi, District-Saran.
5. Sri Niraj Kumar Mishra, S/o Not Known to the Petitioner, The Officer-In-Charge, Police Station -Manjhi, District-Saran.

... .. Opposite Parties

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Appearance :

For the Petitioner/s	:	Mr. Rakesh Kumar, Advocate
		Mr. Rikesh Sinha, Advocate
For the Opposite Party/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 : 17-10-2023

The present M.J.C. is filed for non-compliance of the orders of this Court dated 23.02.2021 passed in C.W.J.C. No. 3703 of 2021. It is necessary to extract the relevant portion of the order:

“Petitioner through learned counsel undertakes to make himself available on 16.03.2021 at 10:30 A.M. before the appropriate



authority which may be in the attending facts, the Collector of the Saran District/Appellate or the Revisional Authority. If the Collector is not himself dealing with the matter on account of delegation of power or assignment of work to another officer of his District, he shall fix a date directing the parties to appear before the said officer, which date shall be not exceeding one week. Also, he shall inform the said authority of fixing of such date. We clarify that convenience of parties, specially during the time of Pandemic Covid-19 is of prime importance and it shall be open for the authority to hear the parties with the use of technology, i.e. Video Conferencing facility etc.

Learned counsel for the State undertakes to communicate the order to all concerned, including the District Magistrate and no certified copy of the order shall be required to be placed on the file of proceedings pending or initiated under the Act, for such order is available on the official website of the High Court & can be downloaded and/or verified from there, in the times of current Pandemic Covid-19.

We only hope and expect that the Authorities under the Act shall take appropriate action at the earliest and in accordance with law, within the time schedule fixed, failing which the vehicle/property/things liable for confiscation shall be deemed to have been released without any further reference to this Court.

Liberty reserved to the petitioner to take recourse to such remedies as are otherwise available in accordance with law if the need so arises subsequently.

Petition stands disposed of with the aforesaid observations/directions”.



2. In the light of the aforementioned order, the petitioner was required to appear on 16.03.2021 at 10.30 A.M. before the Collector of Saran District/appropriate authority. Petitioner is stated to have appeared on the date fixed by the Court, whereas the concerned authority refused to entertain him on such date due to Covid-19, which was prevalent in that period. Thereafter, petitioner had approached the concerned authority on 08.09.2021. He had submitted statement in Confiscation Case No. 161 of 2021. Confiscation proceeding was concluded on 27.09.2021. Consequently, respondents have proceeded in auctioning the subject matter of motor vehicle. The amount realized on auction is a sum of Rs. 205312/-. Before the aforementioned event of auction of motor vehicle, petitioner had preferred this contempt MJC petition on 25.08.2021.

3. Learned counsel for the respondent, vehemently, contended that having regard to the fact that petitioner failed to appear within the time limit before the competent authority. Pursuant to the observation made by this Court in the order dated 23.02.2021, confiscating authority proceeded to pass order. Respondents are not in knowledge of the order of this Court dated 23.02.2021.

4. It is to be noted that one Mr. Kumar Manish, SC-



5 had appeared in the C.W.J.C. No. 3703 of 2021 decided on 23.02.2021, he should have informed the concerned authority having regard to the time bound direction/observation made by this Court for appearance of the petitioner on 16.03.2021. On the other hand, all along contention of the respondent is that they are not having knowledge of the orders of this Court dated 23.02.2021, whereas the subject matter of auction is dated 27.07.2022. It is shocking to notice that respondents are not in receipt of order dated 23.02.2021 passed in C.W.J.C. No. 3707 of 2021, when the State counsel represented in the matter and they are not aware of the aforementioned order for about one year five months. In other words, if they had knowledge of the orders of this Court, they should have stalled the auction proceeded. In the meanwhile, as and when petitioner approached the concerned authority on 08.09.2021 in the confiscation proceeding, they must have been apprised the fact of disposal of C.W.J.C. No. 3703 of 2021 on 23.02.2021.

5. In the pleadings, respondents have taken contention that Covid-19 period was in vogue, therefore, they were not in a position to discharge functions relating to confiscation proceeding timely. The same principle is applicable to the petitioner also, if there is no iota of evidence that he had



appeared on 16.03.2021 at least his appearance in the confiscation proceeding on 08.09.2021 should have been taken into consideration before proceeding and passing adverse orders against him. The respondents' department should have made necessary efforts to file Review Petition in C.W.J.C. No. 3703 of 2021 decided on 23.02.2021 to overcome the hurdle of time bound direction, if the order was not communicated to them. Such action should have been taken before auctioning the subject matter of motor vehicle and the same has not been undertaken.

6. *Prima facie*, both the petitioner and the respondents are at fault. However, taking note of Covid-19 situation, which was in vogue from April, 2020 to April, 2022, the petitioner cannot be faulted, at the same time respondents also, however, in all fairness, if the respondents are taking shelter under Covid-19 in that event they should have stalled confiscation proceeding during the Covid-19 period. They cannot approbate and reprobate. Moreover, the present petition was filed on 25.08.2021, before auction proceedings.

7. Having regard to these facts and circumstances, it is a case warranted for imposition of cost. Cost has been quantified at Rs. 25000/- cost shall be paid to the petitioner



within a period of eight week from the receipt of this order.
Insofar as questioning the validity of confiscation proceeding
before appropriate forum, petitioner is at liberty to do the same
and in accordance with law.

8. Accordingly, the contempt petition stands
dropped.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

manish/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.10.2023
Transmission Date	NA

