

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17809 of 2021

Vijay Kumar Singh, aged about 60 years, M. S/o Upendra Singh R/o- Ward no. 13, Malaypur, Malepur, P.S.-Adarsh Jamui, Distt. Jamui,

..... Petitioner/s

Versus

1. State of Bihar through Additional Chief Secretary, Excise Department Bihar, Patna.
2. The Additional Chief Secretary, Bihar, Patna.
3. The Secretary, Department of Excise, Bihar, Patna.
4. The Commissioner Excise, Bihar, Patna.
5. The District Magistrate Cum Collector, Jamui, at Jamui.
6. The Superintendent of Police Jamui, at Jamui.
7. S.H.O., Adarsh PS, Jamui.
8. Murli Manohar Singh, Son of Anil Kumar Singh, R/o Village Malaypur (Chauhangarh), P.S.- Malaypur, District- Jamui.

..... Respondent/s

Appearance :

For the Petitioner/s : Mr. Amresh Kumar Sinha, Advocate
For the Respondent/s : Mr. Kumar Manish, SC 5

**CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI and
HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA**

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA)

Date : 06-12-2023

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

“For setting aside of order dated 24.08.2021, passed by respondent no. 2 in Excise Revision Case No. 78 of 2021, whereby as contained in memo no. 837 dated 24.08.2021 by which the order dated 03.05.2021 passed by respondent no. 4 has been upheld. Also for setting aside of order



dated 03.05.2021, passed by respondent no. 4 in Excise Appeal Case No. 260 of 2021, whereby the order dated 22.01.2021 passed in confiscation case no. 260 of 2021 by respondent no. 5 has been upheld. Also for setting aside of order dated 22.01.2021, passed by respondent no. 5 in Confiscation Case No. 260 of 2021, whereby which confiscation order has been passed as the vehicle no. JH-15-P-1869 was confiscated and further order to put the said vehicle on auction after fixing the minimum floor price.”

2. The petitioner's motor vehicle Maruti Swift model bearing Registration No. JH-15-P-1869 is the subject matter of alleged offences under the Bihar Prohibition and Excise Act, 2016. In this regard, an F.I.R. was registered on 17.11.2019. Thereafter, confiscation proceedings were drawn on 22.01.2021 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 03.05.2021 and 24.08.2021 respectively. In this backdrop, the present petition is filed for release of his vehicle which was confiscated in Confiscation case no. 260 of 2021 and ordered for vehicle auction after fixing the minimum floor price vide order dated 22.01.2021 and further seeking declaration that the auction was illegal and so also for



release of the motor vehicle.

3. Learned counsel for the petitioner submitted that on 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 by any of 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. does not reveal that there was 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 motor vehicle and proceeded for auction on 22.01.2021.

4. It is further submitted that official respondent no. 5 has filed counter affidavit dated 20.12.2021. In the Counter Affidavit, he has disclosed the fact relating to disposal of seized motor vehicle by means of auction on 08.09.2021.

5. From perusal of FIR, it appears that Excise Appeal No. 260 of 2021 and Excise Revision Case No. 78 of 2021, two person were found in the Motor Vehicle bearing Registration No. JH-15-P-1869 in drunken state and after searching the car, the Police also found 100 ml. of whiskey in a 750 ml. bottle of Royal



Challenge whiskey on the back seat of the vehicle in question. So, this finding also duly denotes that the vehicle in question was not used in transportation of liquor and petitioner was also not found at the place of occurrence.

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 17.11.2019 for the offences under Sections 30(A) & 37 of the Bihar Prohibition and Excise Act, 2016 in Jamui PS Case No. 585 of 2019. The respondents have proceeded with the confiscation proceeding which was concluded on 22.01.2021 against the petitioner and it was affirmed by the next higher authorities, namely, Appellate and Revisional authority on 03.05.2021 & 24.08.2021 respectively. 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 was not in the absence of material evidence. The same has been appreciated by the Appellate authority as well as Revisional authority.

8. It is notable here that the petitioner approached before this Court vide CWJC No. 2913 of 2020 for release of his vehicle which was disposed off vide order dated 08.07.2020 with



direction to conclude the confiscation proceeding within Ninety (90) days, failing which the vehicle shall be deemed to have been released without any further reference to this Court. But, the proceeding was concluded on 22.01.2021 which was after 90 days i.e., 196 days.

9. This Court had clearly directed the Respondents in CWJC No. 2913 of 2020 to conclude the proceedings within 90 days which was not followed by the respondents and they are directed that the auction amount along with 6% shall be paid to the Petitioner within a period of three 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/- (Fifty Thousand only) cost shall be paid to the petitioner.

10. Accordingly, present writ petition stands allowed.

(Ramesh Chand Malviya, J)

(P. B. Bajanthri, J)

Brajesh Kumar/-

AFR/NAFR	
CAV DATE	29.11.2023
Uploading Date	07.12.2023
Transmission Date	

