

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13338 of 2023

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Md. Arif Ali Son of Md. Ashraf Ali, Resident of village-Belsar Lock, P.O.-
Belsar, P.S.- Mehendiya, District-Arwal.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Additional Chief Secretary, Department of Prohibition and Excise, Government of Bihar, Patna.
2. The Excise Commissioner, Department of Prohibition and Excise, Government of Bihar, Patna.
3. The Collector-cum-District Magistrate, District-Rohtas.
4. The Station House Officer, Dinara Police Station, District- Rohtas.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Sunil Kumar Dubey
For the Respondent/s : Mr.Vivek Prasad (Gp7)

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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 : 22-09-2023

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

*“To issue a writ in the nature
of certiorari for setting aside order
dated 17.7.2023 passed by the
Respondent Excise Commissioner,
Bihar, Patna in Excise Appeal Case
No.92 of 2023, affirming the order dated
25.4.2023 passed by the Respondent
Collector-cum- District Magistrate,
Rohtas in Excise Confiscation Case
No.478 of 2022, arising out of Dinara
P.S. Case No.227 of 2022 dated
27.6.2022 instituted under Section 30(a)
of the Bihar Prohibition and Excise Act,
2018, whereby and where-under Brezza*



car vehicle of the petitioner bearing Registration No. BR02BC 5942 bearing Chassis No. MA3NYFJISMH833507, Engine No K15BN4180268 has been ordered to be confiscated under Section 58(ii) of Bihar Prohibition and Excise Act, 2016 and further directed, the Assistant Commissioner, Prohibition, Rohtas for selling it by public auction and proceeds be deposited with the State Government;

ii) To issue a writ of certiorari further for setting aside order dated 25.4.2023 passed by the Respondent Collector-cum-District Magistrate, Rohtas in Excise Confiscation Case No.478 of 2022;

iii) To issue a writ in the nature of mandamus directing/commanding the Respondents to release Brezza car of the petitioner bearing Registration No. BR02BC 5942 bearing Chassis No. MA3NYFJISMH833507, Engine No K15BN4180268, in favour of petitioner which has illegally been seized in connection with Dinara P.S. Case No.227 of 2022 dated 27.6.2022 instituted under Section 30(a) of the Bihar Prohibition and Excise Act, 2018

(iv) To grant any other relief or reliefs for which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

2. The subject matter of motor vehicle bearing Registration No. BR-02BC 5942, i.e., Brezza car is alleged to have been involved in Dinara P.S. Case No. 227 of 2022 dated 27.06.2022 and thereafter confiscation and appeal proceedings were completed in which petitioner's suffered an order.



3. On the other hand, it is evident on record that petitioner's subject matter of motor vehicle Brezza car was stolen by some person in this regard petitioner had filed FIR on 16.02.2022 which is much earlier to that of filing of FIR on 27.06.2022 in respect of Excise Case is concerned. The same has not been appreciated by the Confiscation Authority as well as Appellate Authority.

4. The petitioner has not availed the remedy of revision on the score that Excise Commissioner is also holder of the post of Secretary to the Excise Department. Therefore, there would not be an efficacious revision remedy to the petitioner.

5. Taking note of these material information and the fact that FIR was filed on 16.02.2022 on behalf of the petitioner insofar as theft of the subject matter of motor vehicle and it has not been appreciated by the respective authorities. Merely, if there is a recovery of liquor from a motor vehicle, the owner of the vehicle cannot be subjected to these types of proceedings that to when the petitioner has filed FIR on 16.02.2022 in respect of theft of the subject matter of motor vehicle. Therefore, we have to draw inference that there is an arbitrary action on the part of the Confiscating Authority and Appellate Authority.



6. Accordingly, both the orders are set aside. District Magistrate is hereby directed to release the subject matter of motor vehicle in favour of the petitioner after due examination/identifying the person read with documents of the subject matter motor vehicle. Vehicle shall be released within a period of two weeks’ from the date of receipt of this order.

7. With the above observation, the present writ petition stands allowed.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

abhishekk/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.09.2023
Transmission Date	NA

