

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14659 of 2022

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Rinju Devi Daughter of Ganaur Sah, Wife of Sita Ram Sah, Resident of
Village - Kaswa Pataura, P.S. - Motihar, Muffassil District - East Champaran.
... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Excise,
Govt. of Bihar, Patna.
2. The District Magistrate, West Champaran, Bettiah.
3. The Superintendent of Police, West Champaran, Bettiah.
4. The Officer in Charge of Nautan Police Station, District West Champaran.
... .. Respondents

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Appearance :

For the Petitioner	:	Mr. Dhurendra Kumar, Advocate
For the Respondent	:	Mr. P.K.Shahi, Advocate General Mr. Kumar Manish, SC-5

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL ORDER

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

4 22-02-2023 We have heard Mr. Dhurendra Kumar, learned
counsel for the Petitioner and Mr. P.K. Shahi, learned Advocate
General, Bihar.

2. The petitioner has approached this Court by filing
the present writ application under Article 226 of the
Constitution of India, seeking direction to the respondents to
release the vehicle, i.e., Tata Punch car bearing Registration No.
BR-05AT-9955 seized in connection with Nautan P.S. Case No.
407 of 2022, registered for the offence punishable under Section
30(a) of the Bihar Prohibition and Excise Act, 2016 ('the Act'
for short).



3. The said vehicle was seized on 29.07.2022 by the police officials on the allegation that it was being used for transportation of 26.500 liters of Indian made foreign liquor. There is a provision for confiscation of vehicle under the Act. The Rules framed under the Act provide the procedure for confiscation of vehicle. Rule 12A of the Bihar Prohibition and Excise Rules ('the Rules' for short) reads as under: -

"12A. Release of Vehicles, Conveyance etc. on Payment of Penalty: -

(1) If any vehicles, conveyance, vessel, animal etc. has been seized by any police or excise officer under the Act, then in terms of section-57B (1) of the Act, the Collector or an officer authorized by him upon receipt of an application in Form IV by the owner of the said conveyance or vehicle etc., may release the said conveyance or vehicle upon payment of such penalty as may be ordered by the Collector or the officer authorized by him. Provided, where it is not possible to ascertain the owner of the vehicle or the owner is not coming to claim the vehicle, the Collector or the officer authorized by him, after waiting for 15 days from the date of seizure, shall proceed to confiscate and auction the vehicle as per the provisions of the Act.

(2) The penalty shall be 50% of the latest insured value of vehicle/conveyance. The insured value is the value of the vehicle as assessed by the insurance company. Where, the insured value is not available or the Collector or the officer authorized by him has reason to believe that the vehicle is undervalued, he shall get the valuation



done by the District Transport Officer and 50% of that value shall be the amount of penalty. In any case, the Collector shall not wait beyond 15 days from the date of seizure and if during this period, the accused/owner does not pay up the penalty, he shall proceed with the confiscation/auction.

(3) Notwithstanding above, if on a report by police officer or excise officer, the Collector or the officer authorized by him is satisfied that releasing the vehicle or conveyance shall not be in the public interest, he shall proceed ahead with the confiscation of the said vehicle or conveyance and its subsequent auction/disposal.

(4) Where the conveyance is such that its valuation/insurance is not possible, the Collector or the officer authorized by him shall impose such fine as he deems fit. While imposing such fine, the Collector or the officer authorized by him shall have due regard to the economic status of the individual, nature of his involvement in the crime and the quantum of intoxicant recovered.

(5) Such penalty shall be, regardless of the outcome of the trial if any, before the Special Court, non-refundable.

(6) The owner of the vehicle/conveyance shall, after the release of the vehicle/conveyance, produce the vehicle/ conveyance as and when required by the authorities.

[Explanation: In all pending/ongoing cases of confiscation/ auction of vehicles, the Collector or the officer authorized by him may give an opportunity to the existing owner to pay the aforesaid penalty and get the vehicle released. Upon satisfaction about ownership and upon payment of such penalty, the ongoing confiscation/auction



proceeding may be dropped and the vehicle released.]"

4. It is an admitted fact that confiscation proceeding has not been concluded within 90 days of the seizure of the vehicle, which is one of the requirements under sub-rule (7) of Rule 13(A) of the Rules. Rule 12(A) of the Rules confers upon the confiscating authority jurisdiction to provisionally release a vehicle seized under the Act, during the pendency of the confiscating proceeding. In our opinion, since the confiscation proceeding could not conclude within 90 days from the date of the seizure of the vehicle, as stipulated under Rule 13(A) of the Rules, the confiscating authority has no other option, but to provisionally release the vehicle forthwith pending the confiscation proceeding.

5. Mr. Shahi, learned Advocate General, has produced before us a copy of the communication dated 07.02.2020 jointly issued by the Additional Chief Secretary, Home Department-cum-Excise (Prohibition) and Registration Department, Government of Bihar, and the Director General of Police, Bihar, addressed to all Collectors, Senior Superintendents of Police, Superintends of Police, all Assistant Commissioners (Excise) and all Superintends (Excise) in the State of Bihar, in the light of various orders passed by this Court, reference of which has



been made in the said communication. Paragraph 8 of the said communication requires the authorities to conclude the confiscation proceeding within three months.

6. This Court is overburdened with the litigations arising out of the Act, mostly complaining breach of the statutory provisions under the Act and various orders passed by this Court from time to time, some of which have been mentioned in the said communication of the Chief Secretary, Bihar dated 07.02.2020. Such action/inaction on the part of the authorities overload this Court with unnecessary litigations.

7. For the aforesaid reason, while disposing of the present writ application with a direction to the confiscating authority who is Collector, West Champaran, Bettiah, to provisionally release the petitioner's vehicle on reasonable condition, pending the confiscation proceeding, we direct all concerned to abide by the directions jointly issued by the Additional Chief Secretary, Home Department-cum-Excise (Prohibition) and Registration Department, Government of Bihar, and the Director General of Police, Bihar, as contained in the letter dated 07.02.2020, so as to minimize unnecessary cases coming up before this Court. Any deliberate breach of the said communication shall be treated to be contempt of this Court and



person(s) concerned shall be liable to face consequential action under the Contempt of Court Act, 1971, apart from the disciplinary action under appropriate rules governing their service conditions, as may be deemed fit by the authorities.

8. This writ application stands disposed of with the aforesaid observations and directions.

(Chakradhari Sharan Singh, ACJ)

(Jitendra Kumar, J)

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