IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15193 of 2023

==

Manorma Devi Wife of Kedar Prasad Gupta Resident of S.K. Road, Ward No. 16, P.O. and P.S. Fardisganj, District-Araria.

... ... Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of Excise, Government of Bihar, Patna.
2. The Aditional Secreatary, Department of Excise , Government of Bihar, Patna.
3. The District Magistrate, Araria
4. The Superintendent of Police, Araria.

... ... Respondent/s

==

Appearance :

For the Petitioner/s	:	Ms. Soni Shrivastava, Advocate Mr. Ravi Bhardwaj, Advocate
For the Respondent/s	:	Mr. Kumar Manish, S.C.5 Mr. Kumar Pankaj, A.C. to S.C. 5

==

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

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

3 05-12-2023 In the instant petition, petitioner has prayed for the following reliefs:-

> *(i) For issuance of writ in the nature of Certiorari for quashing of order dated 22.05.2023 passed by the Excise Commissioner, Bihar, Patna in Excise Appeal case no. 48 of 2023 affirming the order dated 21.02.2023 passed by the Collector, Araria in Confiscation case no. 14 of 2022 arising out of Narpatganj P.S. case no. 227 of 2022 rejecting the appeal of the petitioner against the confiscation of XUV – 500 (Jeep) bearing registration no. BR 38P-*

2597 and engine no. HHH 4K 21903.

(ii) For quashing the order dated 21.02.2023 passed by the Collector, Araria in Confiscation case no. 14/2022 arising out of Narpatganj P.S. case no. 227 of 2022 whereby and whereunder the XUV-500(Jeep) of the petitioner having registration no. BR 38P-2597 and engine no. HHH 4K 21903 has been directed to be confiscated.

(iii) For issuing appropriate direction to the respondent authorities for release of the above-mentioned vehicle of the petitioner as the same was not involved either in the possession, sale or transportation of liquor and it has been seized only on the basis of assumption.

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

2. Motor vehicle Model XUV -500(Jeep) bearing registration No. BR 38P-2597 was a subject matter of proceedings for the offences under the Excise Act, namely, Narpatganj P.S. Case No. 227 of 2022 registered for the offences under Sections 272/273 IPC and under Section 30(a) of the Bihar Prohibition and Excise Act, 2016. In this backdrop confiscation proceeding was proceeded against the petitioner and his motor vehicle was confiscated and it was decided against the petitioner on 21.02.2023.

3. Feeling aggrieved and dissatisfied with the confiscation order, petitioner preferred appeal before the

Appellate Authority – Excise Commissioner. Excise Commissioner confirmed the order. Further, he preferred a revision, whereas in the revision, Revisional Authority proceeded not to entertain the petitioner's revision on the score that Appellate Authority (Officer) and Revisional Authority (Officer) are one and the same person. To that extent an order was passed in 25.07.2023, hence, the present writ petition.

4. From perusal of the record, it is evident that there is no material relating to seizure of the liquor from the subject matter motor vehicle. On the other hand, confiscating Authority and Appellate Authority proceeded as if certain materials have been seized from the subject matter motor vehicle and so also they are relying on statement made by the driver to the extent that subject matter motor vehicle was utilized for the purpose of transporting liquor. In other words, taking note of the statements made by the driver, the confiscating Authority and Appellate Authority proceeded to hold that confiscation of subject matter motor vehicle is in order.

5. Learned counsel for the petitioner submitted that in the absence of any iota of material evidence to the extent that liquor was seized from the subject matter motor vehicle and merely the statement made by the driver cannot be taken note

of. For the purpose of confiscating any motor vehicle one of the element should be seizure of liquor from the subject matter motor vehicle. In the present case, there is no seizure of any liquor from the subject matter motor vehicle. In other words, the concerned officials are relying only on the statement made on behalf of the driver to the extent that subject matter motor vehicle was being used for the purpose of transporting liquor. Unless and until physically liquor is seized from the motor vehicle, the motor vehicle cannot be subjected to confiscation and further imposition of penalty or auctioning the motor vehicle.

6. In the present case, both the confiscating Authority and Appellate Authority have not apprised the factual aspect of the matter to the extent that there were no seizure of liquor from the subject matter motor vehicle. Therefore, they have exceeded their discretion insofar as deciding confiscation proceedings and appellate proceedings against petitioner. Accordingly, all the three impugned orders are set aside. The concerned Authority is hereby directed to release the subject matter motor vehicle bearing registration No. BR 38P-2597 after due verification of the owner of the vehicle with reference to registration certificate issued by the concerned Regional Transport Authority /

Transport Department and proceed to release the vehicle within reasonable period of 10 days from today.

7. Having regard to the fact that subject matter motor vehicle has remained under seizure for these many days and such seizure was not in accordance with law, therefore, the present writ petition stands allowed with cost. Cost is quantified at Rs. 25,000/- which shall be paid to the petitioner as the time of releasing of the subject matter motor vehicle.

(P. B. Bajanthri, J)

(Ramesh Chand Malviya, J)

saurabhkr/-

U			