

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17345 of 2022

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Abhishek Anand Sharma Son of Ashok Sharma Resident of Village-
Sonbhadra Suryapur Vansi, P.S.-Vansi, District-Arwal

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Prohibition and Excise Registration, Department Government of Bihar, Patna.
2. The Excise Commissioner, Bihar, Patna.
3. The District Magistrate Cum Collector, Arwal.
4. The Superintendent of Police Arwal
5. The Sub-Divisional Police Officer, Arwal
6. The Superintendent Excise, Arwal
7. The Incharge of Mehendiya Police Station, Arwal.

... .. Respondent/s

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Appearance :

For the Petitioner/s : None
For the Respondent/s : Mr. Vikash Kumar (SC-11)

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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 : 21-08-2023

None appears for the petitioner.

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

*(i) For of appropriate writ/writs,
issuance order/orders, direction/directions
for quashing of order contained in memo no.
250 dated 21.10.2022 passed in Excise
Revision No. 212/2022 issued under the
signature of respondent no. 1 (The Addl.
Chief Secretary) whereby and whereunder
respondent authorities refused the contention*



of petitioner that some one planted the 750ml of foreign liquor put in the Tata Harrier Car with registration no. CG12BD-7900 of petitioner and got him trapped of Mehendiya in Mehendiya P.S. case no. 55/2022 registered u/s 30 of Bihar Prohibition and Excise Act, 2016 incourse of his journey from Chattisgarh to his native village namely Sonbhadra Surpurbansi and further directed the petitioner to deposit the penalty as per Rule 12A(2), 50% of insured value of vehicle within a period of 15 days from the date of order then respondent collector may be freed to proceed with the auction in the Confiscation proceeding.

(ii) For issuance of appropriate writ/writs, order/orders, direction/directions for quashing the memo no. 485 dated 05.09.2022 passed by respondent Commissioner (Respondent no. 2) in Excise Appeal No. 466/2022 whereby and whereunder the respondent no. 2 imposed a penalty as incorporated in Rule 12A(2) of the Bihar Prohibition and Excise (Amendment) Rule 2022 for release of Harrier Car of petitioner bearing registration no. CG12BD7900 by sitting aside the order of respondent no. 3 without considering the fact that someone planted a 750 ml bottle of English liquor in the car and also informed the police party and got the liquor recovered and in his way without any fault on his part, got trapped in a case of Bihar prohibition and Excise Act and his Harrier Car has also been seized and rotting in open air and the condition of release of car is to pay fine on more than Rs. 7 lacs i.e. half of latest insured value of car Rs. 1479592/-.

(iii) For issuance appropriate



writ/writs, order/orders direction/directions for quashing the memo no. 315 dated 08.07.2022 passed by Learned D.M. Cum Collector, Arwal in Confiscation Case no. 38/DM/2022 whereby and whereunder Harrier Car of petitioner bearing registration no. CG12BD7900, Chesiss no. 180631538MPC57090, Engine no. 463438854097888 was directed to be confiscated by invoking the power conferred u/s 58(v) of Bihar Prohibition and Excise Act, disbelieving the contention of petitioner that he was victimized by some unknown person by planting a bottle of 750ml in the car without any knowledge, connivance and intention on part of petitioner.

(iv) For issuance of appropriate writ/writs order/orders direction/directions commanding the respondent authorities to release the Harrier car of petitioner in his favour as he is the bonafide owner of the car and he has no knowledge as to how and who put a English liquor of 750ml in his car and recovery of such liquor was made in suspicious circumstances as neither petitioner has a neither any choice for liquor nor he ever consumed liquor in his lifetime but became pray of the mischief of the provision of Bihar prohibition and Excise Act.

(v) For issuance of any other relief/reliefs for which petitioner is found entitled in the eye of law and in the facts and circumstances of the present case.”

03. The petitioner and his motor vehicle were involved in Mehendiya P.S. Case No. 55/2022 registered for the



offence under Section 30(a) of the Bihar Prohibition and Excise Act, 2016. Arising out of the aforementioned case, confiscation proceeding was drawn by the District Magistrate-cum-Collector, Arwal and concluded in confiscating the subject matter of motor vehicle (Tata Harrier Car) bearing Registration No. CG12BD-7900. Feeling aggrieved and dissatisfied with the confiscation order dated 08.07.2022, petitioner preferred an appeal before the appellate authority and it was numbered as Excise Appeal No. 466 of 2022 and the same was decided against the petitioner on 05.09.2022. The appellate authority while affirming the order of confiscation, imposed the condition in respect of releasing of the subject matter of motor vehicle to pay a fine half of latest insured value of the vehicle in question. Further, aggrieved by the appellate authority's order, petitioner preferred a revision before the Revisional Authority bearing Excise Revision No. 212 of 2022 and it was decided on 21.10.2022, while affirming the orders of the appellate authority. Hence, the present writ petition.

04. Perusal of record, it is evident that 750 ml. of foreign liquor is stated to have been recovered from the subject matter of motor vehicle motor vehicle (Tata Harrier Car) bearing Registration No. CG12BD-7900. The case was registered at



Mehandiya Police Station bearing Mehandiya P.S. Case No. 55/2022 for the offence under Section 30(a) of the Bihar Prohibition and Excise Act, 2016.

05. Having regard to the seizure of 750 ml. of foreign liquor as it is alleged to have been proved in three proceedings, namely, confiscation, appellate and revisional, none of the authorities have taken note of imposition of penalty would be too harsh having regard to the fact that there is merely recovery of 750 ml. of foreign liquor from the subject matter of motor vehicle. Therefore, we are interfering with the order of the Revisional Authority dated 21.10.2022 passed in Excise Revision No. 212 of 2022 and the aforementioned order dated 21.10.2022 is set aside. The matter is remanded to the Revisional Authority to impose penalty in terms of money commensurate with the alleged recovery instead of confiscating the subject matter of motor vehicle for a mere seizure of 750 ml. of foreign liquor. The Revisional authority is also hereby directed to examine whether the petitioner is a habitual offender or not so as to take note of imposition of penalty.

06. In this regard, the petitioner is hereby directed to approach the Revisional authority by furnishing a detailed representation for imposition of penalty in terms of money



instead of confiscating the subject matter of motor vehicle within a period of two weeks from the date of receipt of a copy of this order. The Revisional Authority is hereby directed to take note of petitioner’s representation read with the observation made by this Court, proceed to pass afresh order in Excise Revision No. 212 of 2022 within a period of three months from the date of receipt of the petitioner’s representation.

07. Accordingly, the writ petition stands allowed in-part.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

Ashish/-
Himanshu/-

AFR/NAFR	NA
CAV DATE	NA
Uploading Date	24.08.2023
Transmission Date	NA

