IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2051 of 2024

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Dilip Kumar Yadav S/o Late Arvind Yadav @ Arvind Prasad Yadav, R/o Vill. - Majlishpur P.S. and Dist. - Banka.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Excise and Prohibition Department Govt. of Bihar, Patna.
2. The Excise Commissioner Bihar, Patna.
3. The District Magistrate, Banka.
4. The Sub Divisional Magistrate Banka.
5. The SHO Banka Police Station.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dhananjay Pandey, Advocate
For the Respondent/s : Mr. Government Advocate 8

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY)

Date : 14-05-2024

This writ petition has been filed by the petitioner against the order dated 11.03.2023 passed by S.D.M., Banka (respondent no.4) in Confiscation Case No.46/2022-23 arising out of Banka P.S. Case No. 93/2022 which was affirmed by order dated 12.06.2023 passed by the Excise Commissioner, Bihar, Patna in Excise Appeal No. 53 of 2023.

2. By filing the present writ petition, the petitioner has prayed for the following relief(s):-

(i) For quashing the order dated 12.06.2023 passed by learned Excise Commissioner Bihar

Patna in Excise Appeal No. -53/2023 in which the learned Excise Bihar Patna dismissed the appeal and confirming the order dated 11.03.2023 passed by the learned SDM Banka (Resp no. - 4 Annexure-3) passed in confiscation case no 46/2022/2023 arising out of Banka P.S. Case no. - 93/2022 registered under section 30(a) of Bihar Prohibition and Excise Act 2016, by which the learned SDM Banka confiscated the vehicle petitioner Glamour Motorcycle bearing registration no. BR-51D-3773, Engine no. JA06EHH9M10392, Chasis no. - MBLJAR018H9M06095, in Banka P.S. Case no. - 93/2022 registered under section 30 (a) of Bihar Prohibition and Excise Act 2016 is illegal, unwarranted and bad in law.

ii. For commanding the state respondents to release the vehicle of the petitioner Glamour Motorcycle bearing registration no. BR-51D-3773, Engine no. JA06EHH9M10392, Chasis no. MBLJARO1817MO6095 which was seized in Banka P.S. Case no.93/2022 dated 14.02.2022 contained in annexure - 2. -

iii. For declare offense U/S 30 (a) of Bihar Prohibition and Excise Act 2016 is not applicable in Banka P.S. Case no. 93/2022 in which the vehicle of the petitioner has seized.

(iv) For any other

relief/reliefs, order/orders, direction/directions for which the petitioner is entitled in the eye of law.

3. The petitioner has exhausted the remedy of filing Revision under Section 93 of Act, 2016, by filing Excise Revision No. 36 of 2023 before learned Excise Secretary Bihar Patna which was dismissed on mechanical ground without admitting the said rule.

4. Briefly stated the facts of the case is that 750 ml of illicit foreign liquor was recovered from the motorcycle bearing Registration No. BR-51D-3773 which is owned by the petitioner. On the basis of aforesaid fact, FIR No. 93 of 2022 dated 14.02.2022 was registered in Banka P.S. Case No. 93/2022 under Sections 30(a) and 32(2) of Bihar Prohibition and Excise (Amendment) Act, 2018 and the Respondent No. 4 passed the order on 11.03.2023 in Confiscation Case No.46/2022-23 whereby the vehicle in question has been confiscated and petitioner suffered penalty of Rs.17054/- for carrying illicit liquor.

5. Learned counsel for the petitioner submitted that order dated 11.03.2023 passed by S.D.M., Banka (respondent no. 4) as well as order dated 12.06.2023 passed by Excise Commissioner Bihar, Patna have been passed without

going into the merit of the case as neither learned Excise Commissioner, Bihar, Patna nor S.D.M., Banka has considered the notification dated 05.04.2022 as the petitioner has given Format 4 alongiwth the necessary documents for release of the vehicle in his favour. He further submitted that petitioner has already filed Excise Revision No. 36 of 2023 before learned Excise Secretary, Bihar, Patna which was dismissed on mechanical ground without admitting it on 14.09.2023. In this way, neither learned Excise Commissioner, Bihar, Patna nor S.D.M., Banka has appreciated the statutory provisions for releasing the vehicle of the petitioner and petitioner has already exhausted all the remedies under the statutory provisions. Hence, he has no efficacious remedy rather to invoke the jurisdiction of this Hon’ble Court. He further submitted that meager amount of 750 ml of illicit foreign liquor was recovered from the motorcycle of the petitioner i.e. Glamour motorcycle bearing Registration No. BR-51D-3773 for which learned S.D.M., Banka passed order on 11.03.2023 in Confiscation Case No. 46/2022-23 arising out of Banka P.S. Case No. 93/2022 and imposed a penalty of 50% of the insured value of the vehicle in question i.e. Rs. 16,557/- and in addition to 3% maintenance charge of the imposed penalty i.e. Rs. 497/- as a result of which total penalty imposed on the petitioner is amounting to Rs. 17,054/- and said penalty is against relevant Rule for recover of meagre amount.

6. Counter affidavit on behalf of respondent nos. 3 and 4 has been filed. Learned counsel for the respondent that Order dated 11.03.2023 passed by S.D.M., Banka (respondent no. 4) confirmed by learned Excise Commissioner (respondent no. 2) by virtue of Order dated 12.06.2023 and the same has been passed on the basis of material available on record. He further submitted that a penalty of 50% of the insured value of the vehicle in question i.e. Rs. 16,557/- has been imposed and additional fine of Rs. 497/- has been imposed for maintenance of vehicle which is justified and legal in the eye of law.

7. Having gone through the material available on record, it is crystal clear that there is meager amount of recovery of 750 ml of illicit liquor and imposition of fine is disproportionate to the offence committed and conscious of this court does not allow to impose harsh penalty for meager amount of recovery of 750 ml of illicit liquor. Such disproportionate fine should not be allowed to impose. Imposition of fine also does not commensurate with the offence committed regarding recovery of 750 ml of illicit liquor. Valuation of the vehicle is

not supported by any material information like valuation from the authorized valuer like Insurance Company.

8. Keeping in view the discussions made above, order dated 11.03.2023 passed by S.D.M., Banka (respondent no.4) in Confiscation Case No.46/2022-23 arising out of Banka P.S. Case No. 93/2022 which was affirmed by order dated 12.06.2023 passed by the Excise Commissioner, Bihar, Patna in Excise Appeal No. 53 of 2023, are hereby quashed.

9. As per sub-rule (2) of Rule 12A of Bihar Prohibition and Excise Rules, 2021 read with amended rules of 2022 and 2023, it is the discretionary power of the Collector or the Officer authorized by him, to impose a penalty which should not be less than 10% of insured value of the vehicles and should not be more than 5 lakhs.

10. In the light of the aforementioned statutory provisions, we are of the opinion that model of the vehicle, considering the minimal quantity of illicit liquor recovered, fine of Rs. 17,054/- would be too harsh and it is reduced to a sum of Rs. 3300/-, on deposit of Rs. 3300/- motor vehicle be released. Certified copy of this judgment shall be produced within two weeks before the Excise Commissioner, Bihar, Patna and within two weeks from then if the modified fine as provided herein is

deposited, the vehicle shall be released. If the fine is not remitted, Excise Commissioner, Bihar, Patna shall continue with the confiscation proceedings.

11. With the above observation/direction, the present petition stands disposed of.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

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AFR/NAFR	AFR
CAV DATE	07.05.2024
Uploading Date	14.05.2024
Transmission Date	N.A.