

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3562 of 2023

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Shweta Kumari @ Sweta Kumari Daughter of Bindeshwari Prasad, Resident of Professor Colony Factory Gali No. 6 near Ice cream Factory Dhanbad PS and District- Dhanbad.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Excise and Prohibition Bihar Patna.
2. District Magistrate cum Collector, Saharsa.
3. Superintendent of Excise, Saharsa.
4. Superintendent of Police, at Saharsa.
5. Officer-in-Charge Sonbarsa Raj, District- Saharsa.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Diwakar Prasad Singh, Adv.
For the Respondent/s : Mr.Vikash Kumar (Sc11)

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

Date : 24-07-2024

This writ petition has been filed by the petitioner against the order dated 11.10.2021 passed in Excise Revision Case No. 183 OF 2021 passed by Additional Chief Secretary, Bihar, Patna affirming the order dated 24.08.2021 passed by the appellant authority i.e. Excise Commissioner, Patna in Excise Appeal Case No. 473 of 2021 and the order dated 26.02.2021



passed by the confiscating authority i.e. District Magistrate-cum-Collector, Saharsa (respondent no. 2) in Confiscation Case No. 504 of 2020-21.

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

(i). For issuance of appropriate writ order or direction or writ in the nature of certiorari quashing the order dated 11.10.21 passed by Revisional Authority i.e. Additional Chief Secretary Bihar Patna in which the fact pleaded was not taken into consideration & the revision application was dismissed as such order passed by learned Revisional Authority suffers from the vice of non application of mind as such liable to be set aside.

(ii) That for issuance of appropriate writ order or direction or writ in the nature of certiorari quashing the order dated 24.08.21 passed in Excise Appeal No.473 of 2021 passed by Appellate Authority i.e. Commissioner Excise, in which none of the fact pleaded was taken into consideration & the appeal was dismissed as such order passed by learned Appellate Authority is liable to be set aside.

(iii) for issuance of appropriate writ order or direction or writ in the nature of certiorari quashing the order dated 26.02.21 passed by collector Saharsa passed in Case No.504/ 2020-



21 since passed in contravention of order dated 08.02.21 passed by this Hon'ble Court presided over by Hon'ble the Chief Justice & Hon'ble Mr. Justice S Kumar passed in CWJC No.869 of 2021 (Shweta Kumari Vs The State of Bihar) by which the date of hearing was fixed on 01.03.21 at 10:30 A.M & the Learned counsel for the State was directed to communicate the order to all concerned but the District Magistrate cum collector conspicuously rejected the Confiscation Case on 26.02.21 itself in contravention of judgement/order dated 08.02.21 passed by this Hon'ble Court as such order dated 26.02.21 passed by District Magistrate cum collector at Saharsa in Case No.504/ 2020-21 is liable to be quashed.

(iv) That a direction be issued to the respondent by way of mandamus commanding the respondents to release the MAHINDRA BOLERO PICKUP Van bearing its Registration Number JH-10BT-9898 Engine No. TBJ1M22315 and Chechis No. MA1ZN2TBKJ1M97152

(iv). For any other relief or relief's to which the petitioner be found entitled in law.

3. The petitioner had earlier approached this Court in CWJC No. 869 of 2021 for release of her vehicle and this Court disposed of the writ petition by order dated 08.02.2021 with certain directions. Pursuant to above, petitioner



approached the confiscating authority and the confiscating authority passed the order of confiscation. Petitioner thereafter filed an appeal before the appellate authority and the appellate authority confirmed the order passed by the confiscating authority i.e. the Collector-cum-District Magistrate, Saharsa (respondent no. 2). Thereafter petitioner filed revision and the revisional authority also confirmed the order passed by the confiscating authority. Hence, the present CWJC.

4. Briefly stated the facts of the case is that there is alleged recovery of 414 liters of illicit liquor from the vehicle of the petitioner bearing registration no. JH-10BT-9898. On the basis of aforesaid fact, FIR No. 154 of 2019 dated 15.09.2019 was registered in Sonbarsa Raj P.S. Case No. 154 of 2019 under Sections 30(a) of Bihar Prohibition and Excise Act, 2016.

5. Learned counsel for the petitioner submitted that petitioner is having no criminal history except arising out of the present one. Petitioner was not found at the place of occurrence rather the vehicle in question was being seized regarding the recovery of 414 liters of illicit liquor for which petitioner has nothing to do with the alleged recovery of illicit liquor as the vehicle in question was taken by one Sandip Kumar. Learned counsel further submitted that the order of



confiscation passed by the District Magistrate-cum-Collector, Saharsa on 26.02.2021 is in contravention of the order dated 08.02.2021 passed by this Hon'ble Court in CWJC No. 869 of 2021. It is submitted that the vehicle of the petitioner was auctioned for an amount of Rs. 3,76,000/- and petitioner was deprived of proper hearing in light of the order dated 08.02.2021 passed in CWJC No. 869 of 2021. In this way, order passed by the confiscating authority, the appellate authority and the revisional authority are not tenable in the eye of law as opportunity of proper hearing was not given to the petitioner.

6. Per contra, learned counsel for the respondents submitted that on basis of the proposal of investigation Confiscation Case No. 504 of 2020-21 was initiated before the District Magistrate-cum-Collector, Saharsa (respondent no. 2) in which petitioner filed his show cause and after hearing both the parties order of confiscation was passed by the District Magistrate-cum-Collector, Saharsa on 26.02.2021 and on the basis of the confiscation order, the vehicle in question was auctioned for an amount of Rs. 3,76,000/- and third party right has created. It is further submitted that the order passed by the confiscating authority has been affirmed by the appellant authority i.e. Excise Commissioner, Patna vide order dated



24.08.2021 and accordingly revisional authority has also dismissed the revision of the petitioner on 11.10.2021. Learned counsel further submitted that there is no room to say that petitioner has not been heard as order passed by the confiscating authority clearly indicates the hearing and discusses the contention of the petitioner. There cannot be a ground raised by petitioner that he has not been heard properly.

7. From perusal of the materials available on record, undisputed facts are that there is alleged recovery of huge amount of illicit liquor from the vehicle in question and on the basis of the aforesaid F.I.R. No. 154 of 2019 dated 15.09.2019 was registered in Sonbarsa Raj P.O.S. Case No. 154 of 2019 under section 30(a) of the Bihar Prohibition and Excise Act, 2016. At the time of commission of the offence, the relevant Section- 58 of Excise Act 2016 was applicable, which is reproduced as follows :

58. Confiscation by District Collector.

(1) Notwithstanding anything contained in this Act or any other law for the time being in force, where anything liable for confiscation under this Act is seized or detained under the provisions of this Act, the officer seizing and detaining such property shall, without any reasonable delay submit a report to the District Collector who has jurisdiction over the said area;



(2) On receipt of the report under sub-section (1), the District Collector if satisfied that an offence under this Act has been committed, may, whether or not prosecution is instituted for the commission of such an offence and whether or not a case is pending before any court, order confiscation of such property;

(3) The Collector shall, before passing an order under subsection (2), give a reasonable opportunity to the person concerned, of being heard;

(4) While making an order of confiscation under sub-section (2), the District Collector may also order that such of the properties which the order of confiscation relates, which in his opinion cannot be preserved or are not fit for human consumption, be destroyed. Whenever any confiscated article has to be destroyed in conformity with these provisions, it shall be destroyed in the presence of a Executive Magistrate or officer ordering the confiscation or forfeiture, as the case may be, or in the presence of the Excise Officer not below the rank of a Sub-Inspector;

(5) While making an order of confiscation under sub-section (2), if the District Collector is of the opinion that it is expedient in the public interest to do so, he may order the said property or any part thereof to be sold by public auction or dispose of departmentally and proceeds deposited with the State Government;

(6) The District Collector shall submit a full report of all particulars of confiscation to the Commissioner of Excise within one month of such confiscation.

In light of the aforesaid section there is a provision in sub-section (5) that while making an order of confiscation under sub-section (2), if the District Collector is of the opinion that it is expedient in the public interest to do so, he



may order the said property or any part thereof to be sold by public auction or dispose of departmentally and proceeds deposited with the State Government

8. From perusal of the first information report, the date of occurrence is. 15.09.2019. At the relevant point of occurrence, Section - 58 was applicable in light of the aforesaid facts and circumstances of the present case and by virtue of order dated 26.02.2021 the District Magistrate-cum-Collector, Saharsa (respondent no. 2) has passed the order of confiscation after giving opportunity of hearing to the present petitioner and his contentions have been discussed in the said order and the said order has been affirmed by the superior authorities. We cannot deny that there is recovery of huge amount of illicit liquor from the vehicle in question and there is no reasonable justification for the alleged recovery of huge amount of illicit liquor from the said vehicle. The defence of the petitioner is not tenable in light of the fact regarding recovery of huge amount of illicit liquor from the vehicle of which petitioner is the owner and in light of statutory provision, as discussed above, the order of District Magistrate-cum-Collector, Sahara is on basis of materials available on record and petitioner has not made out a case so as to interfere with the order passed by the confiscating



authority as well as the orders passed by the superior authorities.

9. Considering this aspect of the matter, no interference is needed. Accordingly, the order passed by the confiscating authority and order of the superior authorities are, hereby, affirmed.

10. With the above observation/direction, the present petition stands dismissed.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

mcv/-

AFR/NAFR	AFR
CAV DATE	10.07.2024
Uploading Date	24.07.2024
Transmission Date	

