

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5114 of 2023

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Kunal Kumar Son of Sri Shivanand Prasad Gupta Resident of Sharda Nagar,
Ward No. 27, Saharsa, Police Station- Sadar Saharsa, District- Saharsa, Bihar.
... .. Petitioner/s

Versus

1. The State of Bihar through the Collector, Araria.
2. The District Collector, Araria.
3. The Deputy Collector, Land Reforms, Araria, District- Araria.
4. The Excise Commissioner, Government of Bihar, New Secretariat, Bailey Road, Patna.
5. The Additional Chief Secretary, Excise Dept, Government of Bihar, Patna, Sachivalaya Building, Patna.
6. The Inspector of Police, S.H.O. Jokihat (Mahulgon), Police Station and District- Araria.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Upendra Prasad & Ms.Veena Kumari Jaiswal, Advocates
For the Respondent/s	:	Mr.Manoj Kumar Sinha, AC to SC 19

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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 : 30-08-2024

This writ petition has been filed by the petitioner against the order dated 01.12.2022 passed by Additional Chief Secretary, Govt. of Bihar (respondent no. 5) in Excise Revision Case No. 223 of 2022 affirming the order dated 26.09.2022 passed by the appellate authority i.e. Excise Commissioner, Patna (respondent no. 3) in Excise Appeal No. 479 of 2022 and the order dated 23.08.2022 passed by Deputy Collector, Land Reforms, Araria (respondent no. 3) in Confiscation Case No. 87



of 2022/ 01 of 2022-23.

2. By filing the present writ petition, the petitioner has prayed for the following reliefs :

“For issuance of an appropriate writ(s) order(s) direction(s) commanding the respondent concern to release Mahindra Scorpio belonging to the petitioner bearing its registration No. BR-19J-2824, Enginer No. TDF4K84353, Chasis No. MAITA2TDKF5K18423 which has been seized by Jokihat (Mahalgaun) Police on 04.07.2021 under section 30A of the Bihar Prohibition and Excise Act, 2016 on recovery of 145.110 liters of English wine from Scorpio carried by Chhaila Kumar @ Chaila Yadav and has kept in Jokihat (Mahalgaun) police station in the district of Araria after quashing order dated 23.08.2022 passed by D.C.L.R., Araria in confiscation case No. 87 of 2022/ 01 of 2022-23 whereby the petition filed on behalf of the petitioner has been rejected and for quashing of order dated 26.09.2022 passed by Excise Commissioner in Excise Appeal No. 479 of 2022 whereby appeal filed on behalf of petitioner has been rejected and also for quashing of order dated 01.12.2022 passed by Additional Chief Secretary, Govt. of Bihar in Excise Revision Case No. 223 of 2022, whereby the revision



filed on behalf of the petitioner has been rejected.

3. Briefly stated, the facts of the present case is that there is alleged recovery of 145.110 liters of illicit liquor from the vehicle of the petitioner bearing registration No. BR-19J-2824. On the basis of aforesaid fact, FIR No. 319 of 2021 dated 04.07.2021 was registered in Jokihat (Mahalgaon) P.S. under sections 30(a) of the Bihar Prohibition and Excise Act, 2016.

4. Learned counsel for the petitioner submitted that petitioner was not found at the place of occurrence rather the vehicle in question was being seized regarding recovery of 145.110 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 Chhaila Kumar. The said Chhaila Kumar had requested the petitioner to allow him to take Scorpio for taking his mother to a doctor at Purnea with assurance that he will come back tomorrow, but he did not return and petitioner made efforts to contact him but of no avail. Ultimately, petitioner lodged FIR on 04.07.2021 bearing Saharsa Sadar P.S. Case No. 533 of 2021 against the said Chaila Kumar. Learned counsel further submits that on the basis of the report of the S.H.O., Confiscation Case No. 87 of 2022/01 of 2022-23 was initiated by the Deputy Collector, Land Reforms, Araria



(respondent 3) and after hearing the parties the Deputy Collector, Land Reforms, Araria confiscated the vehicle bearing Registration No. BR-19J-2824 vide order dated 23.08.2022 passed in Confiscation No. 87 of 2022/01 of 2022-23 arising out of Jokihat (Mahalgaon) P.S. Case No. 319 of 2021 dated 04.07.2021 without considering the facts and circumstances of the petitioner in proper perspective and the same was affirmed by the appellate authority i.e. Excise Commissioner, Patna (respondent no. 4) under Section 92 of the Bihar Prohibition and Excise Act, 2016 and thereafter by the revisional authority i.e. Additional Chief Secretary, Govt. of Bihar (respondent no. 5) under section 93 of the Bihar Prohibition & Excise Act, 2016. Petitioner is further ready to avail the remedy under **Rule-12(A)** of the Bihar Prohibition and Excise (Amendment) Rule, 2021 read with amended Rules 2022 and 2023 and the petitioner is further ready to deposit the amount fixed by the confiscating authority. Petitioner is the *bona fide* owner of the seized vehicle and he has no concern with the seized illicit liquor.

5. Per contra, learned counsel for the respondents submitted that the vehicle of the petitioner was found involved in illegal transportation of prohibited liquor, and therefore, confiscation proceeding was initiated bearing Confiscation Case



No. 87 of 2022/01 of 2022-23 under section 58 of the Bihar Prohibition and Excise Act, 2016. Further, the petitioner had the remedy of filing of application for release of the vehicle in question under section 12(A) and 57B of the Bihar Prohibition and Excise (Amendment) Rules, 2022, but petitioner did not avail the same.

6. From perusal of the record, it is evident that there is huge recovery of illicit liquor from the seized vehicle. As per provision of sub-rule (2) of Rule 12(A), which was amended, by which the concerned authority is empowered to impose fine from Rs. 1,00,000 to Rs. 5,00,000/-. Sub-rule 2 of Rule 12(A) (Release of Vehicles, Conveyance etc on Payment of Penalty) of Bihar Prohibition and Excise Rules, 2021 has been amended by Bihar Prohibition and Excise (Amendment) Rules, 2023 and it reads as under :

"(2) The amount of penalty shall be as decided by the Collector or the Officer authorized by him. While imposing the penalty, he shall have due regard to the quantity of intoxicant recovered, involvement of the vehicle owner and the latest insurance value of the vehicle. In no case, the penalty should be less than 10% of the insured value of the vehicle and more than Rs. 5 lakhs. 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.”

7. From perusal of the record it transpired that there is recovery of huge quantity of 145. 110 liters of illicit liquor and petitioner cannot escape from the liability of recovery of such a huge quantity of illicit liquor.

8. In the light of the aforesaid facts and circumstances, as per the aforementioned provision of sub-rule (2) of Rule 12(A), fine of Rs. 5,00,000/- is justified and legal. Accordingly, the impugned orders passed by the respondent authorities are hereby modified to the extent that petitioner is directed to deposit fine of Rs. 5,00,000/-. Certified copy of this judgment shall be produced within two weeks before the Deputy Collector, Land Reforms, Araria (respondent no. 3) and within two weeks from then if the fine, as provided herein, is deposited, the vehicle shall be released. If the fine is not remitted, Deputy Collector, Land Reforms, Araria (respondent no. 3) shall continue with the confiscation proceedings and consequential proceedings, including auctioning of subject matter of motor vehicle if the motor vehicle is not auctioned as on this day.



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

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

mcv/-

AFR/NAFR	AFR
CAV DATE	23.08.2024
Uploading Date	30.08.2024
Transmission Date	

