

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6623 of 2024

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Anil Yadav Son of Ganesh Yadav Resident of Village Narayanpur, Ward No. 14, P.S. Pupri, District Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Prohibition, Excise and Registration Department, Government of Bihar, Patna.
2. The Secretary, Prohibition, Excise and Registration Department, Government of Bihar, Patna.
3. The Excise Commissioner, Prohibition, Excise and Registration Department, Government of Bihar, Patna.
4. The District Magistrate-cum-Collector, Jamui.
5. The District Transport Officer, Jamui.
6. The Excise Superintendent, Jamui.
7. The Superintendent of Police, Jamui.
8. The S.H.O., Chakai Police Station, Jamui.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Jagjit Roshan, Mr. Om Prakash Singh Mr. Ranjeev Ranjan & Mr. Apul, Advocates
For the Respondent/s	:	Mr. Standing Counsel (09)

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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 04.09.2023 passed in Excise Revision Case No. 34 of 2023 passed by the Secretary, Prohibition, Excise and Registration Department, Government of Bihar, Patna (respondent no. 2) affirming the order dated 16.06.2023 passed by Excise Commissioner, Patna (respondent no. 3) in Excise Appeal Case No. 29 of 2023 and the order dated 02.12.2022 passed by



the District Magistrate-cum-Collector, Jamui (respondent no. 4) in Confiscation Case No. 161 of 2022.

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

(i) Issuance of an appropriate writ or writs in the nature of Certiorari quashing the Order dt. 04.09.2023 (Annexure P/10) passed in Excise Revision Case No. 34 of 2023 passed by Respondent No. - 2 by which Revision Application was dismissed in a mechanical manner without giving opportunity of hearing and without considering the submissions which is violation of Principle of Natural Justice.

(ii) Issuance of an appropriate writ or writs in the nature of Certiorari quashing the Order dt. 16.06.2023 passed in Excise Appeal Case No. 29 of 2023 passed by the Excise Commissioner, Prohibition, Excise and Registration Department (Excise), Govt. of Bihar Patna and also to quash Order dt. 02.12.2022 passed in Confiscation Case No. 161 of 2022 arising out of Chakai P.S. Case No. 149 of 2022 whereby and whereunder the Respondents without considering the Merits of the Appeal in a mechanical manner passed the order imposing Penalty of 50% of the Insurance Value of the Vehicle as non-refundable Penalty for releasing the Vehicle Scorpio bearing Registration No. BR-06-PF-3107, Engine No. XMN4A10072, Cha-



sis No. - MA1TA2XM2NA16966 without testing the merits of the Appeal.

(iii) And further to stay the process of Impugned Order passed vide Order dt. 04.09.2023 in Excise Revision Case No. 34 of 2023 (Annexure-P/10) passed by Respondent No. 2 and further to stay the Order dt. 16.06.2023 passed in Excise Appeal Case No. 29 of 2023 passed by Respondent No. 3 and also to stay the Order dt. 02.12.2022 passed in Confiscation Case No. 161 of 2022 passed by Respondent No. 4 till the final adjudication of the present writ petition.

(iv). Grant such other order/orders, relief/reliefs as your Lordships may deem fit and proper.

3. The petitioner had earlier approached this Court in CWJC No. 10983 of 2022 for release of his vehicle and this Court disposed of the writ petition with direction that petitioner is at liberty to get his vehicle released on payment of penalty in terms of Rule 12(A) inserted by amending Bihar Prohibition and Excise Rules, 2021.

4. Briefly stated the facts of the case is that there is alleged recovery of 600 ml of illicit liquor from the vehicle of the petitioner bearing registration no. BR-06-PF-3107. On the basis of aforesaid fact, FIR No. 149 of 2022 dated 05.07.2022 was registered in Chakai P.S. Case No. 149 of 2022 under Sections



30(A)/ 37(C)/45 of Bihar Prohibition and Excise (Amendment) Act, 2018.

5. Learned counsel for the petitioner submitted that the confiscating authority i.e. the District Magistrate-cum-Collector, Jamui (respondent no. 4) has passed the order of confiscation without considering the materials available on record. For the alleged recovery of a meager quantity of 600 ml of illicit liquor from the vehicle of the petitioner, the appellate authority (respondent no. 3) has directed for release of the vehicle on payment of penalty of 50 % of the insured value of the vehicle in terms of rule 12(A) inserted by amending the Bihar Prohibition and Excise Rules, 2021 and the said order of the appellate authority has been affirmed by the revisional authority (respondent no. 2). Learned counsel submitted that for recovery of meager quantity of 600 ml of illicit liquor, such imposition of fine is too harsh and against the spirit of law. Learned counsel further submitted that the vehicle in question was purchased by the petitioner in the year 2022 and the insured value of the vehicle is Rs. 17,42,135/- . Further, the offence committed, so far as, seizure list is concerned, it indicates alleged recovery of 600 ml of illicit liquor from the vehicle in question but provision of section 100 Cr.P.C. has not been followed, thereby, there is clear cut violation of



statutory provision.

6. Learned counsel appearing for the respondent submitted that from perusal of the order passed by the confiscating authority it is crystal clear that in view of direction of the Hon'ble High Court passed in CWJC No. 10983 of 2022 the vehicle of the petitioner has been provisionally released but he has not submitted any application in light of Bihar Prohibition and Excise (Amendment) Rules, 2022 for release of the vehicle and the order of confiscation has been passed after proper hearing of the petitioner which has been discussed in the order dated 02.12.2022 passed by the District Magistrate-cum-Collector, Jamui (respondent no. 4). Learned counsel further submitted that the appellate authority having adhering to the principle of natural justice, and considering all the facts/issues, raised by the petitioner in the appeal, dismissed the appeal and the revisional authority having perused the record has also found no merit in the revision petition and has dismissed the same. Therefore, the contentions raised by the petitioner are not tenable in light of the orders passed by the respondent authorities. It is, therefore, submitted that the order passed by the confiscating authority, the appellate authority and the revisional authority are on basis of the materials available on record, and hence no interference is needed.



7. Having gone through the material available on record, it is crystal clear that there is meager amount of recovery of 600 ml of illicit liquor and imposition of fine is totally disproportionate to the offence committed and conscious of this court does not allow to impose harsh penalty for meager amount of recovery of 600 ml 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 600 ml of illicit liquor.

8. Keeping in view of the discussions made above, we find that the orders passed by the confiscating authority i.e. the District Magistrate-cum-Collector, Jamui (respondent no. 4), the appellate authority i.e. Excise Commissioner, Patna and the revisional authority i.e. Secretary, Prohibition, Excise and Registration Department, Government of Bihar, Patna are not sustainable in the eye of law. Accordingly, the order dated 17.06.2021 passed by the District Magistrate-cum Collector, Jamui 02.12.2022n passed in Confiscation Case No. 161 of 2022, the order dated 16.06.2023 passed by Excise Commissioner, Patna in Excise Appeal No. 29 of 2023 and the order dated 04.09.2023 passed by Secretary, Prohibition, Excise and Registration Department, Government of Bihar, Patna in Excise Revision Case No.



34 of 2023 are, hereby, quashed.

9. Under the aforementioned circumstances, we are of the opinion that for recovery of a meager quantity of 600 ml of illicit liquor, imposition of fine of 50% of the insured value of the vehicle which amount to more than 8 lakhs is too much and too harsh and, as such, it is reduced to a sum of Rs. 25,000/-. Certified copy of this judgment shall be produced within two weeks before the confiscating authority i.e. District Magistrate-cum-Collector, Jamui and within two weeks from then if the modified fine as provided herein is deposited, the vehicle shall be released in favour of petitioner. If the fine is not remitted, the District Magistrate-cum-Collector, Jamui shall continue with the auction proceeding.

10. 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	10.07.2024
Uploading Date	24.07.2024
Transmission Date	

