IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7920 of 2023

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Sunaina @ Suneina wife of Satyendra Kumar and daughter of Bhagwant Prasad, resident of Village - Lodhiya Khurd, Maharajgang Katahari, P.S. and District - Maharajgang (UP) at present resident of House of Mahendra Prasad Thakur, Mainpura, near Mahvir Asthan at and P.S. Danapur, District- Patna - 801503.

... ... Petitioner/s

Versus

1. The State of Bihar through the Commissioner, Excise, Government of Bihar, Vikash Bhawan, Patna.
2. The Collector, Gopalganj.
3. The Superintendent of Police, Gopalganj.
4. The Excise Inspector, Prohibition, Gopalganj.
5. The Station House Officer, Kucayacot Police Station, Gopalganj.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Bhola Kumar, Advocate
For the Respondent/s	:	Mrs. Shama Sinha, SC-5

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE JITENDRA KUMAR

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE JITENDRA KUMAR)

Date : 30-01-2024

The present writ petition has been filed by the petitioner seeking following reliefs:-

> "A. For issuance of a Writ of certiorari quashing the order dated 19.11.2021 passed by the Collector, Gopalganj in Confiscation (Excise) Case No. 700/2020 whereby he has declined to release the said Motorcycle
>
> B. For directing the Collector, Gopalganj to release the Motorcycle bearing registration no. BR01ES 9645, Passion Pro which is lying in the Kuchyacot Police Station, Gopalganj in the favour of the petitioner forthwith.
>
> C. For passing any other suitable Order/s,

appropriate Writ/s or direction/s which Your Lordships deem fit and proper in the facts and circumstances of the instant case."

2. The relevant facts of the case, as emerging from the record, are that on 17.09.2020, Excise Case No. 253 of 2020 was lodged against two accused persons, namely, Satyendra Kumar and Sunil Yadav alleging that both the accused were riding a motorcycle bearing Registration No. BR01ES-9645 on N.H.-28. When they were stopped by the police, 13.900 litres of Indian Made Foreign Liquor were seized from the bag on search. The bag was kept in the hand of accused Sunil Yadav, who was sitting as a pillion. On query, it was also stated by accused Satyendra Kumar that the alleged motorcycle is registered in the name of his wife, Sunaina Devi, who, subsequently, moved this Court in C.W.J.C. No. 15051 of 2021, wherein, this Court passed the following order.

> "We only hope and expect that the Authorities under the Act shall take appropriate action at the earliest and in accordance with law, within the time schedule fixed, failing which the vehicle/property/things liable for confiscation shall be deemed to have been released without any further reference to this Court"

3. In pursuance to the aforesaid order of this Court, the petitioner approached the District Magistrate, Gopalganj. However, vide impugned order dated 19.11.2021, passed in Confiscation (Excise) Case No. 700 of 2020, the District

Magistrate, Gopalganj, held that the confiscation proceeding has already been started with regard to the vehicle in question and the same was concluded on 25.02.2021 and hence it would not be appropriate to again pass any order. However, he suggested the petitioner to file an appeal against the order.

4. Being aggrieved by the impugned order, the present writ petition has been preferred by the petitioner.

5. Ld. Counsel for the Petitioner submits that the impugned order has been passed by the Confiscating Authority without any authority of law and in violation of Article 300 A of the Constitution. He further submits that for seizure and confiscation of any vehicle under the Bihar Prohibition and Excise Act, 2016, the vehicle is required to be used in commission of any offence under the Act with involvement of the owner of the vehicle. He refers to Section 56 of the Act as it stood prior to its amendment in 2022. The alleged offence has been committed on 17.09.2020. He refers to Section 57 B, Section 58 of the Act and Rule 12A of the Bihar Prohibition and Excise Rules 2021. He further submits that as per the Prosecution case itself, 13.9 liter illicit liquor was recovered from the pillion rider of the motorcycle from his bag kept in his hand. It was not recovered from the dickey or any part of the motorcycle. In such situation, it does not lie in the mouth of the Respondents to say that the motorcycle was used to carry the contraband.

6. Ld. Counsel for the Petitioner further submits that the owner of the vehicle, who is Petitioner herein, is also no way involved in the alleged offence, because even as per the prosecution case, she was neither driving the motorcycle nor sitting on the motorcycle, nor is case of the police that she being the owner of the motorcycle, is involved by way of consent for or connivance in use of the vehicle in commission of any offence. That is why she has not been made accused in the criminal case as registered by the police under the Act. As such, the vehicle has been seized and confiscated by the authorities without any authority of law.

7. *Per contra,* Ld. Counsel for the Respondents defends the impugned order submitting that as per the facts and circumstances of the case and the provisions of the Act, the vehicle in question is liable to be seized and confiscated. However, the vehicle has not been auction sold till date as stated in the counter affidavit.

8. In view of the aforesaid facts and circumstances and rival submissions of the parties, the legal question which arises for consideration by this Court is whether the vehicle in question is liable to be seized and confiscated under the Bihar Prohibition and Excise Act, 2016.

9. Before we consider the rival submission of the parties, it would be imperative to refer to the relevant statutory provisions and case laws:-

10. Sections 47, 56, 57B, 58, 61, 92, 93, 95 of the Bihar Prohibition and Excise Act, 2016 and the Bihar Prohibition and Excise Rules, 2021 are relevant statutory provisions in the aforesaid facts and circumstances.

11. Section 47 provides for liability of the person who is under control of the vehicle knowingly permits it to be used for commission by any other persons of an offence punishable under provision of the Excise Act to punishment in the same manner as if he had himself committed the said offence. It reads as follows:-

> **"47. Penalty for allowing premises, etc., to be used for commission of an offence:-** Whoever, whether being a licensee under this Act or otherwise, and having the control or use of any house, room, enclosure, space, animal or conveyance, knowingly permits it to be used for commission by any other person of an offence punishable under any provision of this Act, shall be punishable in the same manner as if he had himself committed the said offence."

12. Section 56 of the Act provides for liability of seized vehicles, amongst other seized items, for confiscation. As per this Section, as it stood prior to amendment in 2022, vehicle used for carrying any intoxicant or liquor is liable for confiscation. The pre-amendment provision of Section 56 is relevant because alleged offence has been committed by the petitioner on 17.09.2020. Section 56 , as stood prior to amendment in 2022, reads as follows:-

> **“56. Things liable for confiscation.-** Whenever an offence has been committed, which is punishable under this Act.-
> (a) any intoxicant or liquor unlawfully imported, transported, manufactured, sold, stored, possessed, material, utensil, implement, apparatus, package or covering and or the other contents, if any, of such receptacle, package or covering for the purposes of storing, manufacturing or labelling such intoxicant or liquor;
> (b) <u>any animal, vehicle, vessel or other conveyance used for carrying any intoxicant or liquor; or</u>
> (c) any premises or part thereof that may have been used for storing or manufacturing any liquor or intoxicant or for committing any other offence under this Act;
> shall be liable to be confiscated in a manner prescribed under the provisions of the Act,
> (d) The State Government, if deem necessary, may issue necessary directions, guidelines, Regulations and instructions with respect to mode and manner of search, seizure and confiscation."
>
> (Emphasis supplied)

13. **Section 57B** as inserted in 2022, by way of amendment, provides that any vehicle used for committing any offence punishable under the Prohibition and Excise Act and having been seized by any police officer or Excise Officer may be released by the Collector upon payment of such penalty as may be notified by the State Government. This Section is applicable to all pending confiscation proceedings by virtue of Explanation no.2. This Section reads as follows:-

> **"57B. Things or premises liable to be released upon penalty.-**(1) Any animal, vehicle, vessel or other conveyance used for committing any offence punishable under this Act that has been seized by any police Officer or Excise Officer may be released by the Collector upon payment of such penalty as may be notified by the State Government.
> (2) Any premises or part thereof used for committing any offence punishable under this Act that has been seized by any police Officer or Excise Officer may be released by the Collector upon payment of such penalty as may be notified by the State Government.
> (3) If the person concerned does not pay the penalty, then the Collector shall proceed to confiscate the said animal, vehicle, vessel or other conveyance and premises as per section-58.
> ***Explanation*** 1.- It shall not be a right of the accused to get his conveyance, item or premises released upon payment of the required penalty. The Collector, based upon a report by a police officer or an excise officer, may, for reasons to be récorded in writing, still refuse to release the said conveyance, item or premises and proceed ahead with confiscation and auction/destruction.
> ***Explanation*** 2.-The Collector shall, from the date of this Amendment coming into force, close the on-going confiscation proceedings if the person concerned pays the penalty as notified and release such vehicle, conveyance or premises.
> ***Explanation*** 3.-Such release shall not affect the outcome of trial, if any before the Special Court."
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> (Emphasis supplied)

14. Section 58 of the Act provides for the procedure and conditions for confiscation of the vehicle or conveyance and other things by District Collector or Officer authorized by him. As per Sub-section 1 of Section 58, the officer seizing the vehicle is required to report to the District Collector without any reasonable delay and as per Sub-Section 2 if the Collector is satisfied, as per the report, that an offence under this act has been committed, he is authorized to confiscate the vehicle, but, as per Sub-section 3, only after giving reasonable opportunity to the person concerned for hearing. Section 58 reads 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 sub-section (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."

(Emphasis supplied)

15. Section 61 provides that when an order for confiscation of any property, which includes vehicle also, has been passed under section 58 of the Bihar Prohibition and Excise Act, 2016 and such order has become final, the property gets vested in the State Government free from any encumbrance. Section 61 reads as follows:-

> "**61. Confiscated articles to vest with the Collector.-** When an order for confiscation of any property has been passed under Section 58 and such order has become final in respect of the whole or any portion of such property, such property or portion thereof, as the case may be, shall vest with the State Government free from any encumbrance."

16. Section 92 provides for departmental appeal against the final orders passed by the authorities under the Act. The order passed by Excise Officer, lower in rank than District Collector, is appealable to District Collector within 60 days, order passed by District Collector is appealable to Excise Commissioner and order passed by Excise Commissioner is appealable to the State Government within 90 days. However, no second appeal is provided against an order passed by Excise Commissioner. Section 92 reads as follows:-

> "**92. Appeals.-**(1) All final orders passed by any Excise Officer other than the Excise Commissioner or Collector under this Act, shall be appealable to the Collector within sixty days from the date of the order.
> (2) All final orders passed by the Collector and Excise Commissioner shall be appealable to the Excise

> Commissioner and the State Government respectively within ninety days from the date of the order complained of. Provided that no second appeal shall lie against an order passed by the Excise Commissioner on appeal.
> (3) The State Government may make rules in this behalf."

17. Section 93 provides for departmental revision. The revisional power has been vested with the State Government. Section 93 reads as follows:-

> **"93. Revision.-** The State Government may, on its own motion or on an application made to it, call for and examine the records of any proceeding before any excise officer or any document, including that relating to renewal or refusal of license or grant of permit, pass etc. under this act, for the purpose of satisfying itself as to the correctness and legality of any order passed in, and as to regularity of any such proceeding and may, when calling for such record, direct that the order be not given effect till the pendency of the examination of the record, so called for. After examining the record, the State Government may annul, reverse, modify or confirm such order, or pass such other order as it may deem fit."

18. Under **Section 95** of the Bihar Prohibition and Excise Act, 2016, the Bihar Government is empowered to make rules to carry out the purposes of the Act. Bihar Prohibition and Excise Rules, 2021 has been made by Bihar Government under Section 95 of the Act. Rule 12A, as inserted in 2022 by way of amendment, provides for release of vehicle, conveyance etc. on payment of penalty. This Rule is applicable to all pending confiscation/auction proceedings by virtue of its Explanation. This Rule reads as follows:-

> **"12A. Release of Vehicles, Conveyance etc. on Payment of Penalty.-** (1) If any vehicles, conveyance,

vessel, animal etc. has been seized by any police or excise officer under the Act, then in terms of Section 57B (1) of the Act, the Collector or an officer authorized by him upon receipt of an application in Form IV by the owner of the said conveyance or vehicle etc., may release the said conveyance or vehicle upon payment of such penalty as may be ordered by the Collector or the officer authorized by him.

Provided, where it is not possible to ascertain the owner of the vehicle or the owner is not coming to claim the vehicle, the Collector or the officer authorized by him, after waiting for 15 days from the date of seizure, shall proceed to confiscate and auction the vehicle as per the provisions of the Act.

(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. In any case, the Collector shall not wait beyond 15 days from the date of seizure and if during this period, the accused/owner does not pay up the penalty, he shall proceed with the confiscation/auction."

(3) Notwithstanding above, if on a report by police officer or excise officer, the Collector or the officer authorized by him is satisfied that releasing the vehicle or conveyance shall not be in the public interest, he shall proceed ahead with the confiscation of the said vehicle or conveyance and its subsequent auction/disposal.

(4) Where the conveyance is such that its valuation/insurance is not possible, the Collector or the officer authorized by him shall impose such fine as he deems fit. While imposing such fine, the Collector or the officer authorized by him shall have due regard to the economic status of the individual, nature of his involvement in the crime and the quantum of intoxicant recovered.

(5) Such penalty shall be, regardless of the outcome of the trial if any, before the Special Court, non-refundable.

(6) The owner of the vehicle/conveyance shall, after the release of the vehicle/conveyance, produce the

vehicle/conveyance as and when required by the authorities.
Explanation. In all pending/ongoing cases of confiscation/auction of vehicles, the Collector or the officer authorized by him may give an opportunity to the existing owner to pay the aforesaid penalty and get the vehicle released. Upon satisfaction about ownership and upon payment of such penalty, the ongoing confiscation/auction proceeding may be dropped and the vehicle released."

(Emphasis supplied)

19. The bare reading of **Section 56(b)** of the Act clearly shows that any vehicle or conveyance can be seized and confiscated under the Bihar Prohibition and Excise Act, 2016 only when the vehicle has been used for carrying any intoxicant or liquor. **Section 58(3)** of the Act provides that during confiscation proceeding, the owner of the vehicle has to be given opportunity of being heard. **Section 57 B(1)** also provides that any vehicle, or other conveyance used for committing any offence punishable under the Act and seized may be released upon payment of penalty. **Rule 12-A(2)** of the Bihar Prohibition and Excise Rules, 2021 also provides that while imposing penalty under **Section 57-B** of the Act, the authority concerned is required to give due regard to the involvement of the vehicle owner.

20. The first and foremost thing, which emerges from the aforesaid discussion of the statutory provisions, is that no vehicle can be seized or confiscated without its use in commission of any offence under the Bihar Prohibition and Excise Act, 2016. Under Section 30 of the Act, transport of illicit liquor or intoxicant is an offence and in commission of such offence, a vehicle can be used. As such, use of the vehicle in transport of illicit liquor/intoxicant is sine qua non for its seizure and confiscation. It also emerges that just use of the vehicle to carry intoxicant or liquor is also not sufficient for its seizure and confiscation. The involvement or connivance of the owner of the vehicle in such illegal use of the vehicle is also an essential prerequisite for confiscation of the vehicle or imposing any penalty for release of the vehicle. Such view has been consistently expressed by this Court in various judicial pronouncements under writ jurisdiction.

21. It has been held by this Court in **Mohammad Basim Akram vs. State of Bihar [2022 (6) BLJ 540]** that when the driver of a vehicle is found to be carrying some quantity of intoxicant or liquor in the vehicle for his personal consumption without any knowledge of the owner of the vehicle, such vehicle cannot be construed of having indulged in transportation of illicit liquor. The facts of the case was that 8.8 litre illicit liquor was recovered from the cabin of the driver and driver had confessed that he had purchased the contraband for his personal consumption and kept in the cabin.

22. There is also a possibility of situation where driver of a motorcycle or car or other vehicles may be carrying small quantity of contraband in his clothes like in pocket of shirt or pant. In such situation also, it would be completely erroneous to hold that vehicle was being used for carrying the contraband. **Hon'ble High Court of Kerala** in **Wilson C.C. Vs. State of Kerala [2022 LiveLaw (Ker) 627]** has expressed similar view. In that case, a person was driving a vehicle and 0.06 grams of LSD Stamp was recovered from wallet kept in his pocket. **Hon'ble Kerala High Court** held that it could not be said that the vehicle was used for conveyance of the contraband and the vehicle is subject to confiscation. In **Thausif Ahammad Bengre Vs. State of Kerala [MANU/KE/0426/2018]** the vehicle was being driven by the driver and 40 grams *Ganja* was recovered from his possession. In that situation, **Hon'ble Kerala High Court** held that it is really fallacious to contend that the vehicle was used for carrying the contraband.

23. It is relevant to point out that in case of direct involvement of the owner of the vehicle in prohibited use of the vehicle, he is made accused in the criminal case registered by the police. Even in case of his indirect involvement by way of permission for or connivance in use of his vehicle in commission of the offence, he is liable to be accused under Section 47 of the Act. As such, unless the owner of the vehicle is an accused in the case , the court can not hold that the owner of the vehicle is directly or indirectly involved in the prohibited use of the vehicle.

24. It is also pertinent to note that in the light of various pronouncements of this Court, Bihar Government has issued **letter dated 07.02.2020 bearing Letter No. 13/HC-06-55/2020-670**. The letter has been written by Additional Chief Secretary, Home Department cum Prohibition, Excise and Registration Department to all District Collectors, Police Officers and Excise Officers. By this letter, the Government has clearly stated in para-2 of the letter that as per direction of this Court, such vehicle, from which no liquor has been recovered, will not be confiscated. In para-3 of the letter, the Government has stated that when the vehicle was being driven by the driver in drunken condition but no liquor has been recovered from the vehicle, only the driver would be prosecuted under the Bihar Prohibition and Excise Act, 2016.

25. Coming to the case at hand we find that on

17.09.2020, the accused Satyendra Kumar and Sunil Yadav were allegedly riding the motorcycle in question and on search 13.9 liter illicit liquor was seized/recovered from the bag kept by the pillion rider, Sunil Yadav in his hand. There is no allegation, as emerging from the FIR, that the contraband was kept/concealed in any part of the motorcycle in question to carry it. In such situation, it would be erroneous to hold that the motorcycle was used to carry the contraband. The word “use” cannot be interpreted liberally giving expansive meaning. It has to be interpreted strictly as it has penal consequences. Even the object and scheme of the Bihar Prohibition and Excise Act does not warrant expansive interpretation. At most, the persons who were found in illegal possession of the contraband may be prosecuted for offence as committed under the Act.

26. We also find that against the petitioner/owner of the vehicle there is no allegation of her direct or indirect involvement in commission of the alleged offence. That is why she has not been made accused in the criminal case registered by the police.

27. In view of the aforesaid facts and circumstances of the case, we find that the twin prerequisites for seizure and confiscation of a vehicle under the Bihar Prohibition and

Excise Act , 2016 – use of the vehicle in carrying / transporting the liquor or intoxicant and the consent or connivance of the owner of the vehicle in commission of the offence - are not fulfilled. Consequently the vehicle in question is not liable to be seized and confiscated under the Act.

28. Hence, the impugned order is arbitrary and hit by Article 14 of the Constitution. It is also violative of Constitutional right of the petitioner to hold property as provided in Article 300 A of the Constitution, which prohibits any deprivation of property without authority of law. The Bihar Prohibition and Excise Act no way authorises the official to seize or confiscate the motorcycle in the alleged facts and circumstances of the case. Hence, the seizure and confiscation of the motorcycle in question is without any authority of law. The confiscation order, is accordingly liable to be quashed. The petitioner, whose constitutional right to property has been violated, is entitled to adequate compensation. He is also entitled to compensation on account of expenditure and harassment in course of forced litigations.

29. Hence, the impugned order dated 19.11.2021 passed by the District Collector, Gopalganj in Confiscation (Excise) Case No. 700/2020 is quashed. The District Collector, Gopalganj is also directed to release the motorcycle in question forthwith. He is further directed to pay Rs. 1,00,000/- (Rupees One Lac) to the Petitioner towards compensation. The payment of the compensation must be made within **ten days** of the receipt of the order.

30. The petition is allowed, accordingly.

(Jitendra Kumar, J.)

I Agree.

(P. B. Bajanthri, J.)

S.Ali/Ravishankar/Chandan/-

AFR/NAFR	AFR
CAV DATE	01.08.2023
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