IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9772 of 2024

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Ajit Kumar Son of Amarjeet Sah, Resident of Village-Sahu Chak, P.S.- Phulwaria, District-Gopalganj at Present resident of Village- Jogiwali, House No. 1128, Station Road Jharsa, District- Gurgaon, Hariyana PIN Code 122001.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Registration Excise and Prohibition Department Government of Bihar, Patna.
2. The Collector cum District Magistrate, Gopalganj.
3. The Superintendent of Police, Gopalganj.
4. The Superintendent of Excise, Gopalganj.
5. The Sub Divisional Magistrate, Gopalganj.
6. The Officer-Incharge of Phulwaria Police Station, District- Gopalganj.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Irshad Ahmad Khan, Adv.
For the Respondent/s : Mr. Standing Counsel No. 9

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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 : 31-07-2024

This writ petition has been filed by the petitioner against the order dated 01.12.023 passed by the Additional Collector, Gopalganj in Confiscation Case No. 1170 of 2023, which has been affirmed by Excise Commissioner vide order dated 19.03.2024 passed in Excise Appeal No. 07 of 2024.

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

(i) For issuance of appropriate writ, order or

direction for quashing the order dated 19. 03.2024 passed by the Excise Commissioner, Patna in Excise Appeal No. 07 of 2024 which dismissed the appeal of the petitioner and confirming the order dated 01.12. 2023 passed by the Subdivisional Magistrate, Gopalganj in Confiscation Case No. 1170 of 2023 which confiscating the petitioner motorcycle (Hero Splendor).

(ii) For issuance of a writ in the nature of mendamus or any other appropriate writ or direction upon the respondents directing them to release the motorcycle (Hero Splendor) bearing Registration No. HR-98J- 6883 which has been seized in connection with Phulwaria P.S. Case No. 341 of 2023 under sections 3(a), 37 of Bihar Prohibition and Excise Act, 2022.

(iii) For insurance of any other appropriate writ, order or direction which your Lordships may deem fit and proper in the fact and circumstances of the case.

3. The petitioner has not exhausted the remedy of revision in the present case but he has availed the remedy of

appeal by filing appeal before the Excise Commissioner, Patna against the order passed by the confiscating authority.

4. Briefly stated, the facts of the case is that petitioner's vehicle is said to have been seized for recovery of 1. 5 liters of illicit liquor. On the basis of the aforesaid fact, F.I.R. no. 341 of 2023 dated 22. 09.2023 was registered in Phulwaria P.S. Case No. 341 of 2023 under sections 30(a), 37 of the Bihar Prohibition and Excise Act.

5. Learned counsel for the petitioner summits that petitioner was not present or apprehended at the spot in Phulwaria P.S. Case No. 341 of 2023 lodged under sections 30(a), 37 of Bihar Prohibition and Excise Act. There is alleged recovery of a meager quantity of 1.5 litres of illicit liquor from the vehicle in question and petitioner cannot be held liable for the alleged recovery as the same was being carried by other persons. Learned counsel further submits that the order passed by the confiscating authority is without any basis or material and petitioner has to suffer a lot for the act of others. He further submits that no useful purpose will be served as vehicle of the petitioner is being confined for indefinite period on a particular place which will cause financial loss to the petitioner and continuance of the confiscation proceeding will cause undue

hardship to the petitioner. In this way, the orders passed by the respondent authorities are against the spirit of law, equity and justice.

6. Learned counsel for the State submits that the order dated 01.12.2023 passed by the Additional Collector, Gopalganj in Confiscation Case No. 1170 of 2023 has been passed on the basis of alleged recovery of illicit liquor from the motorcycle in question and the order passed by the confiscating authority has been affirmed by the appellate authority by its order dated 19.03.2024 passed in Excise Appeal No. 07 of 2024. He further submits that petitioner is the owner of the vehicle in question and he has rushed to this court without availing the statutory remedy of revision as provided under section 93 of the Bihar Prohibition and Excise Act, 2016 and the present writ petition can be dismissed on the said count alone. He further submits that the confiscating authority having considered the materials available on record passed a reasoned and speaking order and confiscated the vehicle in question as it was used as a means for transportation of prohibited article which is liable to be confiscated in law for the time being in force. The orders passed by the respondent authorities are based on reasoning and therefore no interference is needed. Learned counsel further

submits that since petitioner without availing remedy of filing revision has directly approached this court, the writ petition is liable to dismissed for want of merit as well as being premature.

7. From perusal of record it has been transpired that there is recovery of a meager quantity of 1.5 litres of illicit liquor from the vehicle in question and the confiscating authority has confiscated the vehicle in question and the petitioner has also not submitted any insurance paper showing valuation of vehicle and the concerned authority has not made any whispering regarding provision of section 12A of the Bihar Prohibition and Excise Rules, 2021 read with amended Rules 2022 and 2023 which is quite relevant in such matters. For recovery of such a meager quantity of 1.5 liters of illicit liquor, confiscation of the vehicle in question is not justified and legal and in the confiscation order relevant provision of section 12A of the Bihar Prohibition and Excise Rules, 2021 read with amended Rules 2022 and 2023 has not been discussed as to why this provision is not applicable in the present case.

8. In light of the discussion made above, the order dated 01.12.023 passed by the Additional Collector, Gopalganj in Confiscation Case No. 1170 of 2023 is not justified and legal and the same is, hereby, set aside. Consequently, the order dated

19.03.2024 passed by the Excise Commissioner, Patna in Excise Appeal No. 07 of 2024 is also set aside.

9. Petitioner is directed to file a detailed application under Rule 12A of the Bihar Prohibition and Excise Rules, 2021 read with amended Rules 2022 and 2023 in the prescribed format along with the insurance paper showing valuation of the vehicle within a period of two weeks from today. If such application is submitted before the competent authority within the stipulated time, the competent authority is hereby directed to pass appropriate order within four weeks on receipt of such application keeping in view that there is recovery of a meager quantity of illicit liquor from the said vehicle.

The writ petition stands disposed of with the above observations/directions.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

mcv/-

AFR/NAFR	NAFR
CAV DATE	24.07.2024
Uploading Date	31.07.2024
Transmission Date	