IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9504 of 2023

Munna Ram, Son of Sri Shiva Nandan Ram, Resident of Village Janpara, P.S. Rani Talab, District-Patna.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Registration, Excise and Prohibition, Government of Bihar, Patna.
2. The District Magistrate cum Confiscation Authority, District- Patna, Bihar.
3. The Senior Superintendent of Police, District- Patna, Bihar.
4. The Station House Officer cum Investigating Officer, P.S. Dulhin Bazar, District- Patna, Bihar.

... ... Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Chandan Kumar, Advocate
For the Respondent/s	:	Mr. Kumar Manish (SC-5)

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 civil writ petition under Article 226 of the Constitution of India has been preferred praying for the following reliefs:

> "(1) Release of the Tata Vehicle 207 RX bearing Registration No. BR-01-GH-1131 in favour of the petitioner which is seized in connection with Dulhin Bazar P S Case No. 108 of 2022 dated 09.05.2022 instituted Under Section 279 / 337 and 338 of the Indian Penal Code read with Section 37 (b) (c) of the Bihar Prohibition and Excise Act, 2016 as amended in 2018 within the jurisdiction of Dulhin Bazar Police Station ;
>
> (ii) Restraining the Respondents from taking any coercive action in connection Dulhin Bazar PS Case No. 108 of 2022 dated 09.05.2022 instituted Under Section 279 / 337 and 338 of the Indian Penal Code

read with Section 37 (b) (c) of the Bihar Prohibition and Excise Act, 2016 as amended in 2018 within the jurisdiction of Dulhin Bazar Police Station. ”

2. The relevant facts, as emerging from the record, are that on written report of one Saurabh Sinha, Dulhin Bazar P.S. Case No. 108 of 2022 was registered on 09.05.2022 for offences punishable under Sections 279, 337 and 338 of the Indian Penal Code and Section 37 (b)(c) of the Bihar Prohibition and Excise Amendment Act, 2018 against one Sobhnath Mochi. As per the report, on 09.05.2022 the informant along with his uncle were going from his village to Vikram for work. All of a sudden, one pickup vehicle bearing registration no. BR-01-GH-1131, coming from opposite direction, hit the informant and his uncle due to negligence of the driver and high speed of the vehicle. The vehicle coming from behind was also affected and two people namely Rahul Kumar and Chittranjan Kumar were badly injured. Thereafter, they were taken to the PHC Dulhin Bazar Hospital and from there, doctors referred them to Patna. The driver of the vehicle was apprehended and the vehicle was seized by the police and the apprehended accused disclosed his name as Shobhnath Mochi. In breath analyzer test, he was found to have consumed 311 mg/100 ml alcohol.

3. During the course of hearing, it has been informed by Ld. counsel for the State that in pursuance to the order of this Court dated 10.08.2023, the vehicle in question has been released to the petitioner with some undertaking.

4. Heard Ld. Counsel for the petitioner and Ld. Counsel for the respondents.

5. Ld. counsel for the petitioner submits that as per the alleged facts and circumstances, it is crystal clear that there was no recovery of any illicit liquor or intoxicant from the vehicle and vehicle was only being driven by the driver in a drunken condition. In such situation, there are several pronouncements of this Court to the effect that in such type of facts and circumstances, the vehicle is not liable for seizure and confiscation under the Bihar Prohibition and Excise Act, 2016. Only the driver could be prosecuted for offence committed under the Act. Even the Government of Bihar has issued letter to this effect. In such situation, the Respondent-official may be directed not to proceed with confiscation proceeding under the Bihar Prohibition and Excise Act in regard to the vehicle in question which has already been released to the petitioner.

6. However, Ld. counsel for the Respondent submits that vehicle in question has already been released without any penalty and only undertaking has been taken from the petitioner to produce the vehicle before the trial court concerned, if and when required during trial. He however maintains that the vehicle in question is also liable for confiscation under the Bihar Prohibition and Excise Act in view of the facts and circumstances of the case or the petitioner is liable to pay penalty for release of the vehicle under the Act.

7. In view of the aforesaid facts and circumstances and the 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 confiscated under the Bihar Prohibition and Excise Act, 2016 or the petitioner is liable to pay penalty for release under the Act.

8. Before we consider the rival submissions of the parties, it would be imperative to examine the relevant statutory provisions and case laws.

9. Sections 56, 57B, 58, 61 and Section 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 of the case.

10. Section 56 of the Act provides for liability of seized vehicles, amongst other seized items, for confiscation. It reads as follows:-

“ **56. Confiscation of Seized Items:-** Notwithstanding anything contained in Section 57B, whenever an offence punishable under this Act, is committed, the Collector or an officer authorized by him may confiscate such items based on the report of the investigating officer.

(2) Such items may include -

(i) any premises or part thereof;
(ii) any animal, vehicle, vessel or conveyance;
(iii) any liquor or intoxicant;
(iv) any other item having bearing with the case;

Provided, where things as mentioned in Section 57 are to be destroyed, then the Collector or an officer authorized by him need not confiscate the same before their destruction.

(3) The State Government may issue necessary direction, guidelines, regulations and instructions with respect to the mode and manner of search, seizure, destruction and confiscation."

11. **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 reads as follows:-

"**57B. Things or premises liable to be released upon penalty.-**(1) <u>Any animal, vehicle, vessel or other conveyance used for committing any offence punishable under this Act that has been seized</u> 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)

12. 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)

13. 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."

14. 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 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) <u>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</u>. 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)

15. Rule 13A of the Bihar Prohibition and Excise Rules 2021 as inserted in 2022 by way of amendment provides for the procedure of confiscation of vehicle etc. It reads as follows:

“13A. **Procedure of confiscation of vehicle/conveyance etc.-**(1) Where it is decided by the Collector that the vehicle is not to be released on penalty or where the owner does not pay the required penalty, the confiscation proceeding shall be initiated. The proposal for confiscation of the conveyance shall be sent the police/excise officer to the Collector (or an officer authorized by him) within 30 days from the date of seizure. The officer concerned shall immediately start the confiscation proceeding.

In case of delay of beyond 30 days, in submission of the proposal for confiscation, the police/excise officer will have to explain the delay.

(2) The officer concerned, on receipt of proposal for confiscation of any vehicle(s) or other conveyances from police/excise officer, shall issue show cause notice to owner of the said vehicle or the vessel or other conveyance. Simultaneously. he shall issue notice to the District Transport Officer and the Chemical Examiner for their reports.

(3) Such notice issued by the officer shall be served as per procedure prescribed in the Code of Criminal Procedure, 1973 for service of summons. He shall obtain report from the District Transport Officer or any authority authorized for the purpose of registration of the conveyance and the report of chemical examiner within 30 days of seizure.

(4) The officer shall provide reasonable opportunity of hearing to the owner. The investigating/inquiry officer shall also be given opportunity to participate in such hearing.

(5) If, on the date fixed for hearing, the person(s) to whom the notice has validly been served fail(s) to appear in the proceeding on two consecutive dates fixed for hearing, the confiscating authority shall proceed to pass the order ex-parte.

6) The officer, after hearing the parties, on satisfaction that an offence has been committed in terms of the Act, shall pass appropriate order with respect to seized vehicle or vessel or conveyance as the case may be.

7. The officer shall ensure that the order for confiscation is pass within 90 days from the date of seizure of the vehicle.

8. Any person aggrieved by the order passed by the Collector under the provisions of the Act may file appeal in the manner prescribed under these rules.”

(Emphasis supplied)

16. The bare reading of Section 57B(1) of the Act clearly 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.

17. From the aforesaid provisions, it emerges, by express provisions or necessary implication that the use of the vehicle in commission of the offence under the Act is *sine qua non* for confiscation or release on payment of penalty. If the vehicle in question is no way involved in the alleged offence, no penalty could be imposed upon the owner for its release, no confiscation proceeding could be started in regard to the vehicle. When the driver of a vehicle is found to have consumed intoxicant or liquor in violation of the Bihar Prohibition and Excise Act, 2016, no one can contend that the vehicle was used in commission of the offence under the Act. Hence, the vehicle cannot be seized and confiscated under the prohibition Act. At most, the driver may be prosecuted for the offence committed. On several occasions, seizure and confiscation of vehicle being driven by the driver in drunken condition has been deprecated by this Court, if no recovery of contraband has been made from the vehicle. **Diwakar Kumar Singh vs. State of Bihar [2018 (3) BLJ 85]** and many other judgments may be referred to.

18. 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.

19. Coming to the case at hand, we find that no recovery of any contraband was made from the vehicle. As per the allegation, vehicle was only being driven by the driver in drunken condition. In such situation, the vehicle in question is not liable to be seized and confiscated under the Bihar Prohibition and Excise Act, 2016.

20. However, for offence of rash and negligent driving under the IPC, as alleged in the FIR by the police, the vehicle could be seized for producing before the trial court, as and when required during trial. However, for offence under the IPC, the vehicle cannot be confiscated or retained by the Police or any authority. It has to be released to custody of the owner with undertaking to produce it before the trial court as and when directed by it. The concerned authority has already released the vehicle to the Petitioner with undertaking in pursuance to our interim order dated 10.08.2023, whereby we had invoked our writ jurisdiction to direct the concerned authorities to release the vehicle to the Petitioner. That interim order dated 10.8.2023 is finally confirmed in the facts and circumstances of the case.

21. It is also necessary to hold that the vehicle in question is not liable to be confiscated under the Bihar Prohibition and Excise Act, 2016, nor the petitioner/owner of the vehicle is liable to pay any penalty under the Act for release of the vehicle to him in the alleged facts and circumstances. Accordingly, the Respondents are directed neither to initiate any Confiscation Proceeding in regard to the vehicle in question, nor to impose any penalty upon the petitioner to release the vehicle to him.

22. The petition is allowed, accordingly.

(Jitendra Kumar, J.)

I agree.

(P. B. Bajanthri, J.)

S.Ali/Ravishank
ar/Chandan/-

AFR/NAFR	AFR
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