IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13894 of 2024

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Sanjay Kumar son of Singheshwar Prasad, resident of Village- Biroul, P.S.- Khajauli, District - Madhubani.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise Department, Government of Bihar, Patna.
2. The Commissioner, Excise Department, Government of Bihar, Patna.
3. The Director General of Police, Police Department, Government of Bihar, Patna.
4. The Inspector General of Police, Darbhanga Division, Darbhanga.
5. The District Magistrate, Madhubani, District - Madhubani.
6. The Sub-Divisional Officer, Jaynagar, District- Madhubani.
7. The Superintendent of Police, Madhubani, District- Madhubani.
8. The Officer-In-Charge of Jaynagar Police Station, District- Madhubani.
9. The Investigation Officer of Jaynagar, P.S. Case No. - 202 of 2023, P.S. - Jaynagar, District - Madhubani.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Subhash Kumar Jha
For the State	:	Mr. Jitendra Kumar Roy, SC-13
		Mr. U.K. Singh, AC to SC-13

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
And
HONOURABLE MR. JUSTICE S. B. PD. SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE S. B. PD. SINGH)

<u>Date : 04-10-2024</u>

In the instant petition, petitioner has prayed for the following relief(s) :-

"*That the present application is being filed for issuance a writ in the* *nature of certiorari for quash the Order dated- 02.02.2024, passed in Excise Revision Case No. 45 of 2023 by Learned Excise Secretary, Patna, by which he has dismissed the revision petition of the petitioner and confirmed the Order dated 27.11.2023, passed in Excise Appeal Case No. 151 of 2023, by Learned Excise Commissioner, Patna, whereby and where under he had dismissed the excise appeal of the petitioner and confirmed the order dated 11.07.2023, passed in Confiscation Case No. 105 of 2023, by Learned Sub-Divisional Officer, Jaynagar, District Madhubani, by which he has directed to confiscate the vehicle namely Scorpio bearing old Registration WB-40N-7786 and new Reg. No. BR-19V-4430, Chassis No. MA1TB2HAN82D75426 and Engine No. HA84D15144, which was seized in connection with Jaynagar P.S. Case No. 202 of 2023, dated 15.05.2023, corresponding to G.R. No. 730 of 2023, with an allegation to carry 2 litre of Foreign Liquor and further be pleased to quash the all the above* *mentioned order of the authorities concerned and to release the above mentioned vehicle of the petitioner in his favour."*

2. Briefly stated, the facts of the case is that there is alleged recovery of 2 liters of Indian made foreign liquor and 180 ml. of bear from the possession of four F.I.R named accused persons from a Scorpio vehicle bearing Old Registration No. WB-40N-7786 and New Registration No. BR-19V-4430. On the basis of aforesaid fact, Jaynagar P.S. Case No. 202 of 2023 dated 15.05.2023 was registered under sections 272, 273/34 of the Indian Penal Code and Section 30(a) of the Bihar Prohibition and Excise (Amendment) Act, 2022.

3. Learned counsel for the petitioner submits that only a meager quantity of illicit liquor was recovered from the vehicle in question. The petitioner is rightful owner of the said vehicle and he was not apprehended at the time of seizure of illicit liquor. He

further submits that proper notice has not been served upon the petitioner, and thereby, respondent authority has violated the cardinal principle of natural justice. The Excise Superintendent, Saharsa auctioned the petitioner's vehicle vide order dated 07.12.2022 to the petitioner/Sanjay Kumar himself for a sum of Rs. 1,17,000/-.

4. Learned counsel for the respondent submits that the order passed by the appellate authority is justified and legal and the same is on the basis of material available on record. The vehicle in question was auctioned at Rs. 1,17,000/- and the said vehicle was purchased by the petitioner himself. In this way, the order passed by the respondent authority is justified and legal and on basis of material available on record, and hence, no any interference is needed.

5. Having gone through the material available on record, it is crystal clear that there is recovery of a meager quantity of 2 liters of Indian made foreign

liquor and 180 ml. of bear and the vehicle has been auctioned at Rs. 1,17,000/- which is totally disproportionate to the offence committed and conscious of this Court does not allow to impose harsh penalty for recovery of meager quantity of 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 2 liters of Indian made foreign liquor and 180 ml. of bear. That apart, petitioner is not habitual offender for the offences under Excise Act and Rules.

6. Keeping in view of the discussion made above, we find that the order dated 02.02.2024 passed by the learned Excise Secretary, Patna in Excise Revision Case No. 45 of 2023 as well as the order dated 27.11.2023 passed by learned Excise Commissioner, Patna in Excise Appeal No. 151 of 2023 are not sustainable in the eye of law and the same are hereby set aside.

7. We are conscious of the fact that auction proceeding has already taken place, the vehicle in question has already been auctioned for a sum of Rs. 1,17,000/- and the said vehicle has been purchased by the petitioner himself, and therefore, we are not remitting the matter as we are exercising extra-ordinary jurisdiction under Article 226 of the Constitution of India. Further we are of the opinion that for recovery of such a meager quantity of 2 liters of Indian made foreign liquor and 180 ml. of bear imposition of fine of Rs. 1,17,000/- is on higher side and too harsh and, as such, it is reduced to a sum of Rs. 10,000/-. Certified copy of this judgment shall be produced within two weeks before the confiscating authority i.e. Sub-Divisional Magistrate, Jaynagar, District-Madhubani and the auction money deposited by the petitioner amounting to Rs. 1,17,000/- be released in favour of the petitioner within a period of six weeks from the date of deposit of Rs. 10,000/-

towards fine.

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

(P. B. Bajanthri, J)

(S. B. Pd. Singh, J)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08/10/2024
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