

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10625 of 2024

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Sheo Shankar Mahto @ Shiv Shankar Mahto Son of Ram Ishwar Mahto,
Resident of Motipur Purani Bazar, P.S. Motipur, District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of Excise, Prohibition and Registration, Bihar, Patna.
2. The Excise Commissioner, Bihar, Patna.
3. The District Magistrate-Cum-Collector, Muzaffarpur.
4. The Senior Superintendent of Police, Muzaffarpur.
5. The Sub-Divisional Magistrate, Muzaffarpur.
6. The S.H.O., Minapur, Police Station, Minapur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Sunil Kumar Pandey, Adv.
For the Respondent/s : Mr.Standing Counsel 28

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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 : 31-08-2024

This writ petition has been filed by the petitioner against the order dated 13.05.2024 passed by the appellate authority i.e. Excise Commissioner, Patna (respondent no. 2) in Excise Appeal Case No. 33 of 2024 affirming the order dated 22.02.2024 passed by the Sub-Divisional Magistrate, East, Muzafarpur in Confiscation Case No. 26.02.2021.

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

(i) To issue an appropriate order/s, direction/s including a writ preferably in the nature of



certiorari for quashing the order dated 13.05.2024 passed in Excise Appeal Case No. 33 of 2024 passed by the learned Excise Commissioner, Bihar, Patna (respondent no. 2) whereby and whereunder he has dismissed the said appeal affirming the order dated 22.02.2024 passed by the learned Sub-Divisional Magistrate East, Muzaffarpur in Confiscation Case No. 85 of 2023 (arising out of Minapur Panapur O.P. P.S. Case No. 422 of 2023 u/s 30(a) of the Bihar Prohibition and Excise Act, 2018 and sections 272, 273 of Indian Penal Code) by which he has refused to release the seized vehicle Alto Car having its registration No. BR-06-DE-2397.

(ii) To quash the order dated 22.02.2024 passed by the Sub-Divisional Magistrate, East Muzaffarpur authorized office to initiate confiscation proceedings under section 58 of the Bihar Prohibition and Excise Amendment Act, 2018 in connection with aforesaid case, whereby and whereunder he has refused to release the vehicle in question and put the vehicle be sold in auction.

(iii) To direct the respondent no. 5 to release the vehicle in question in terms of amended provision as contained in Rule 12A(2) of the Bihar Prohibition and Excise (Amendment) Rules, 2023 on the payment of penalty of 10% of the insured value of the vehicle.



(iv) To any other relief/s to which the petitioner may be found entitled in the facts and circumstances of the case.

3. Briefly stated the facts of the case is that there is alleged recovery of 120 liters of spirit from the vehicle of the petitioner bearing registration no. BR-06-DE-2397. On the basis of aforesaid fact, FIR No. 422 of 2023 dated 08.10.2023 was registered in Meenapur P.S. under Sections 30(a) of Bihar Prohibition and Excise (Amendment) Act, 2018.

4. Learned counsel for the petitioner submitted that the vehicle of the petitioner is insured and the insured value of his vehicle is Rs. 506960/- . Petitioner had filed application in terms of Rule 12A(2) of the Bihar Prohibition and Excise (Amendment) Rules, 2023 for release of his vehicle on payment of penalty of 10% of the insured value of the vehicle, but the confiscating authority has declined to release his vehicle and directed to initiate auction proceeding without considering the facts and circumstances of the petitioner in proper perspective and the same was affirmed by the appellate authority. In this way, the order passed by the confiscating authority as well as the appellate authority are not tenable in the eye of law and are fit to be set aside.

5. Per contra, learned counsel for the respondents



submitted that on basis of the proposal of investigation Confiscation Case No. 85 of 2023 was initiated before the Sub-Divisional Magistrate, East Muzaffarpur (respondent no. 5) and thereafter order of confiscation was passed and the same was affirmed by the Excise Commissioner, Patna. The confiscating authority as well as the appellate authority have passed the impugned orders after considering the materials available on record, and as such, the writ petition is liable to be dismissed.

6. From perusal of the record, it transpired that there is recovery of huge quantity of 120 liters of spirit from the vehicle in question and on the basis of the aforesaid F.I.R. No. FIR No. 422 of 2023 dated 08.10.2023 was registered in Meenapur P.S. under Sections 30(a) of Bihar Prohibition and Excise (Amendment) Act, 2018. In this context, Section- 58 of Excise Act, 2016 is quite relevant, which reads as under :

“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 subsection (2), give a reasonable opportunity to the person concerned, of being heard;

(4) While making an order of confiscation under subsection (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 subsection (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.”

(underline supplied)

7. In light of the aforesaid section there is a provision in sub-section (5) that 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.

8. We cannot deny that there is recovery of huge amount of spirit and petitioner cannot escape from the liability of recovery of such a huge quantity of spirit being the owner of the vehicle in question. In light of the statutory provision, as discussed above, the confiscating authority has passed the impugned order after considering the materials available on record and the same has been affirmed by the superior authority. The orders passed by the confiscating authority as well as the appellate authority are legal and justified. Petitioner has not made out a case so as to interfere.

9. In view of the discussion made above, no interference is needed. Accordingly, C.W.J.C. No. 10625 of 2024 stands dismissed.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

mcv/-

AFR/NAFR	AFR
CAV DATE	28.08.2024
Uploading Date	31.08.2024
Transmission Date	

