IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17661 of 2021

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Mr. Bishnu Kumar Son of Shri Ram Nath Sharma Resident of Village- Sheikhpura, P.O.- Khajuri, P.S.- Naubatpur, District- Patna, Bihar- 801109.

... ... Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Excise Department, Govt. of Bihar, Old Secretariat, Patna.
2. The Excise Commissioner Patna, Bihar.
3. The Collector-cum- District Magistrate Kaimur (Bhabhua).
4. The Superintendent of Police Kaimur (Bhabhua).
5. The Station Head Officer, Mohania Police Station, Kaimur (Bhabhua).
6. Brajesh Kumar, S/o Bhogwan Pd. Gupta Village- Awari, Ward No.- 16, P.O.- Mohaniya, P.S.- Mohaniya, Dist.- Kaimur

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Manu Tripurari, Mr. Apurv Harsh, Mr. Raghu Raj Prasad, Mr. Hritik Anand, Ms. Almanya & Mr. Gaurav Sharma, Advocates
For the Respondent/s	:	Mr. Vivek Prasad (GP 7)
For respondent no. 6	:	Mr. Kumar Sunil & Mr. Sandeep Kumar, Advocates

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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 : 24-07-2024

This writ petition has been filed by the petitioner against the order dated 17.06.2021 passed by the District Magistrate-cum Collector, Kaimur, Bhabhua (respondent no. 3) in Confiscation Case No. 115 of 2019 arising out of Mohania P.S. Case No. 117 of 2021, which has been affirmed by Excise

Commissioner vide order dated 17.08.2021 passed in Excise Appeal No. 466 of 2021.

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

> *(i). For issuance of appropriate writ/order directing the respondent authorities for release of the Hundai Venue Car bearing Registration No. BR-01FA-4170 which has been seized by the Police Mohania P.S. Case No. 117 of 2021 dated 26.03.2021, Spl. Case No. 350 of 2021 pending before the Court of Special Judge Excise, Kaimur at Bhabhua, registered for offences punishable under section 30(A) of Bihar Prohibition & Excise Act, 2016.*
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> *(ii) For issuance of appropriate writ(s), order(s), or direction(s) quashing the order dated 17.08.2021 passed by the Court of Excise commissioner, Patna in Excise Appeal No.466 of 2021 in connection with Mohania P.S. Case No. 117 of 2021 whereby the order of Collector, Kaimur dated 17.06.2021 has been confirmed.*
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> *(iii) For issuance of appropriate writ/order or direction to the Respondents to take no coercive measure against the petitioner in connection with the Mohania P.S. Case No. 117 of 2021 dated 26.03.2021 including non-auction/selling of confiscated vehicle.*
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> *(iv). For any other relief or reliefs to which the*

petitioner is entitled in the facts and circumstances of the case.

3. The petitioner had earlier approached this High Court by filing C.W.J.C. No. 12669 of 2021 without exhausting statutory remedy of appeal against the confiscation order passed by the confiscating authority. The High Court vide order dated 27.07.2021 disposed of the same with certain direction.

4. Briefly stated the facts of the case is that there is recovery of 2 pieces of 375ml of illicit liquor from the vehicle of the petitioner bearing registration no. BR-01FA-4170. On the basis of aforesaid fact, FIR No. 117 of 2021 dated 26.03.2021 was registered in Mohania P.S. Case No. 117 of 2021 under Sections 30(a) of Bihar Prohibition and Excise Act, 2016.

5. Learned counsel for the petitioner submitted that petitioner was neither driving the car nor was present in the car. He had voluntarily given his car to his brother-in-law for temporary period. It is further submitted that his car was auctioned for an amount of Rs. 7,60,000/- though there is recovery of only a meager quantity of 2 pieces of 375 ml illicit liquor, for which petitioner is not liable. It is further submitted that the order of passing by the confiscating authority is totally

against the equity of law and justice and his vehicle has been confiscated without considering the materials available on record. Petitioner approached the appellate authority i.e. Excise Commissioner, Patna by submitting that petitioner has no criminal antecedent and he is the bona fide owner of the vehicle in question and he has been falsely implicated in the case, and as such, he is entitled to get release of the vehicle in question in his favour. The appellate authority by the order dated 17.08.2021 passed in Excise Appeal No. 466 of 2021 rejected the appeal of the petitioner and affirmed the order passed by the confiscating authority.

6. Learned counsel appearing for the respondent submitted that the confiscating authority has passed the order of confiscation on basis of the materials available on record. There is recovery of 2 pieces of 375 ml of illicit liquor from the vehicle in question and on basis of the said seizure the present confiscation proceeding was initiated, and accordingly, the appellate authority confirmed the order passed by the confiscating authority i.e. the Collector-cum-District Magistrate, Kaimur (Bhabhua) (respondent no. 3). It is, therefore, submitted that the order passed by the confiscating authority as well as the appellate authority are on basis of the materials available on

record, and hence no any interference is needed.

6. Two counter affidavits have been filed in this case. One on behalf of respondent nos. 3 & 4 and the other on behalf of respondent no. 6, in whose favour the vehicle has been auctioned. In para 10 of the counter affidavit filed on behalf of the respondent nos. 3 & 4, it has been stated that for the auction of the said vehicle, a press notification was published in daily Hindustan paper in 18.08.2021 edition under the signature of respondent no. 3 by which it was notified that such vehicle will be auctioned on 27.08.2021 in the premises of Mohania P.S. and accordingly one Brajesh Kumar (respondent no. 6) was found to be highest bidder and accordingly Parwana was issued in his favour after deposit of Rs. 7,60,000/- through the Chalan No. 08 dated 01.09.2021 (Annexure-E to the counter affidavit).

7. Having gone through the material available on record, it is crystal clear that there is meager amount of recovery of 2 pieces of 375 ml illicit liquor and vehicle has been auctioned for Rs. 7,60,000/- which is totally disproportionate to the offence committed and conscious of this court does not allow to impose harsh penalty for meagre amount of recovery of 2 pieces of 375 ml 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 pieces of 375 ml illicit liquor. From perusal of auction proceeding, it is evident that the vehicle has been auctioned for an amount of Rs. 7,60,000/- .

8. Keeping in view of the discussions made above, we find that the orders passed by the confiscating authority i.e. the District Magistrate-cum-Collector, Kaimur at Bhabhua and the appellate authority i.e. Excise Commissioner, Patna are not sustainable in the eye of law. Accordingly, the order dated 17.06.2021 passed by the District Magistrate-cum Collector, Kaimur, Bhabhua (respondent no. 3) in Confiscation Case No. 115 of 2019 arising out of Mohania P.S. Case No. 117 of 2021 and the order dated 17.08.2021 passed by Excise Commissioner, Patna in Excise Appeal No. 466 of 2021 are, hereby, quashed.

9. Considering the fact that it is second round of litigation, auction proceeding has already taken place, the vehicle in question has already been auctioned for an amount of Rs. 7,60,000/- and a third party right has already been created, we are not remitting the matter as we are exercising extra-ordinary jurisdiction. Further, we are of the opinion that for recovery of a meager quantity of 2 pieces of 375 ml of illicit

liquor, imposition of fine of Rs. 7,60,000/- is too much and too harsh and, as such, it is reduced to a sum of Rs. 60,000/-. Certified copy of this judgment shall be produced within two weeks before the confiscating authority i.e. District Magistrate-cum-Collector, Kaimur, Bhabhua and the auction money amounting to Rs. 7,60,000/- be released in favour of petitioner within a period of four weeks from the date of deposit of Rs. 60,000/- towards fine.

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

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

mcv/-

AFR/NAFR	AFR
CAV DATE	10.07.2024
Uploading Date	24.07.2024
Transmission Date	