IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19459 of 2021

Umesh Kumar @ Umesh Yadav son of Darogi Yadav resident of Village- Rabdi, Post Pachmo, Police Station Hariharganj and District- Palamu (Jharkhand).

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
2. The Additional Chief Secretary, Registration, Excise and Prohibition Department, Bihar, Patna.
3. The Excise Commissioner, Government of Bihar, Patna.
4. The District Magistrate-cum- Collector, Aurangabad.
5. The Superintendent of Police, Aurangabad.
6. The Excise Superintendent, Aurangabad.
7. The Officer-in Charge, Muffasil Police Station, District- Aurangabad.

... ... Respondent/s

Appearance :
For the Petitioner/s : Mr. Manish Kumar No. 2, Advocate
For the Respondent/s : Mr. Vivek Prasad, GP 7

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 04-04-2024

In the instant writ petition, the petitioner has prayed for the following relief/reliefs:

> *"That this present writ application is being filed for issuance of appropriate writ/writs, order/orders for setting aside the order dated 06.09.2021 passed in Excise Revision No. - 119 of 2021 by the learned Additional Chief Secretary, Registration,*

Excise and Prohibition Department, Bihar, Patna whereby and whereunder the revision application filed against the order dated 19.07.2021 passed in Excise Appeal Case No. - 392 of 2021 by the learned Commissioner, Excise, Bihar, Patna has been rejected and order dated – 31.01.2021 passed in Excise Confiscation Case No. - 168 of 2019 and 64 of 2021 by the learned Senior Deputy Collector, Aurangabad has been upheld by which the confiscation proceeding with respect to the vehicle (Bolero) of the petitioner bearing Registration No. JH-03P-5863 having Engine No. - GPG4H87335 and Chassis No. - MA1WY2GPKG5J23844 seized by the Muffassil Police Official, Aurangabad in connection with Mufassil P.S. Case No. 04 of 2019 registered for offence under Section 30 (a) of the Bihar Prohibition and Excise Act, 2016 has been concluded and the vehicle of the petitioner has been confiscated and directed to sale the same in public auction, further to direct the Respondent Authorities to release the Vehicle (Mahindra Bolero) of the petitioner in his favour and/or for any other relief or reliefs to which the petitioner may be found entitled to in course of hearing of this writ application."

2. On 23.12.2021, this Court had passed the following order:

"Learned counsel for the petitioner submits that the F.S.L. report was not considered by any one of the authorities. He is not sure as to whether the same was submitted at all or not.

Let both the facts be verified by Shri Vivek Prasad, learned counsel for the State and affidavit be filed.

List on 24.02.2022.

Status quo as on date shall be maintained."

3. The vehicle of the petitioner bearing registration No. JH 03 R – 5863 was involved in Muffasil P.S. Case No. 04 of 2019 for the offences under clause (a) of Section 30 of the Bihar Prohibition and Excise Act 2016, (hereinafter referred to as, 'the Act, 2016'). Two persons were alleged to have been arrested for carrying illegal country made liquor of about 520 litres.

4. Arising out of the aforementioned Mufassil P.S. Case No. 04 of 2019 parallelly a confiscation proceedings were initiated and concluded under Sections 56 and 58 of the Act, 2016. The confiscation proceedings resulted in confiscation of the subject matter of motor vehicle. Feeling aggrieved by the confiscation authority's order dated 30.01.2021 passed by the Senior Deputy Collector, Aurangabad in Confiscation Case No. 168 of 2019, he preferred appeal before the appellate authority under Section 92 of the Act, 2016. Appellate authority affirmed the order of the confiscation in Excise Appeal Case No. 392 of 2021. Still aggrieved by the confiscation authority's order and appellate authority's order, petitioner invoked revision under Section 93 of the Act, 2016 in filing Excise Revision No. 119 of 2021 and it was decided against him on 06.09.2021. Hence the present writ petition.

5. Learned counsel for the petitioner submitted that confiscation of the subject matter of vehicle would be too harsh having regard to the fact that owner of the subject matter of vehicle is not involved, the driver and another have taken undue advantage of transportation of country made liquor to the extent of 520 litres for which owner shall not be penalized insofar as confiscation of the vehicle is concerned. It is also submitted that all the three authorities have not apprised about the status of the petitioner that he is the owner of the subject matter of vehicle and the alleged offence has been committed by the driver and another for which he shall not be penalized.

6. *Per contra,* learned counsel for the respondents resisted the aforementioned contentions and submitted that all the three authorities have examined the factual aspects of the matter read with the law in force and proceeded to confiscate the vehicle and it has been affirmed by the appellate and revisional authorities, therefore, there is no infirmity.

7. At this stage, learned counsel for the petitioner submitted that instead of confiscation of the vehicle certain fine could have been imposed in view of the Bihar Prohibition and Excise Rules, 2021 read with amended Rule 12 A which was amended on 05.04.2022.

8. Learned counsel for the State has appreciated that the alternative relief could be granted to the petitioner insofar as imposition of fine in terms of later law in respect of seizure of the illegal liquor and motor vehicle read with procedures.

9. Heard learned counsel for the respective parties.

10. Undisputed facts are that subject matter of vehicle was involved for the offence under the Excise Act. Petitioner was subjected to confiscation proceedings and two more proceedings *namely* appellate and revision. In all the three proceedings, petitioner had suffered orders. Nodoubt there is no infirmities in the confiscation proceedings and its affirmation by two authorities, be that as it may, the petitioner's vehicle was involved for the excise offence for the first time, therefore fine should have been imposed or levied. At the same time, we have to draw inference that the confiscating authority and next higher authorities hands were tied for the reasons that there were no provision for imposition of fine as on 30.01.2021, the date on which Senior Deputy Collector, *Aurangabad* confiscated subject matter of vehicle in Confiscation Case No. 168 of 2019 and further its affirmation on 19.07.2021 by the appellate authority and revisional authority on 06.09.2021. In other words, as on 06.09.2021, Rule 12 A under Bihar Prohibition and Excise Rules, 2021 read with amended Rules, 2022 and 2023 were not existing. The aforementioned provisions are subsequent. Taking note of later policy decision of the State in the form of Rules insofar as confiscation of the vehicle or a premise, even the authorities are empowered to impose fine in respect of confiscation of motor vehicle or premise. In other words, State government noticed the law relating to confiscation of motor vehicle or premise/s arising out of Excise law would be too harsh and resulted in introduction of imposition of fine provisions in the Excise Law. Taking note of the later law we propose to interfere with the impugned orders dated 30.01.2021, 19.07.2021, 06.09.2021. Accordingly, they are set aside.

11. It is to be noted that by virture of interim order of *status quo* as on 23.12.2021, the official respondent's hands were tied in not auctioning the subject matter of confiscated vehicle with reference to confiscation proceedings dated 30.01.2021 followed by its affirmation dated 19.07.2021 and 06.09.2021. Therefore, we propose to remand the matter in the form of petitioner to submit a detailed application under Rule 12 A of

Bihar Prohibition and Excise Rules, 2021 read with amended Rules, 2022 and 2023 in the prescribed format within a period of four weeks from today. If such application is submitted before the competent authority, the competent authority is hereby directed to pass speaking order insofar as imposition of certain fine. In this regard, a formal notice shall be issued to the petitioner and thereafter, proceed to impose fine with reference to value of the motor vehicle (insurance value as on the date of seizure of the vehicle) read with value of the seized country made liquor. In this regard, speaking order shall be passed within a period of four weeks from the date of receipt of petitioner's application under Rule 12 A. If imposed fine is remitted by the petitioner in that event subject matter of vehicle be released within three days from the date of remittance of fine, failing which respondents are at liberty to proceed with auction of the subject matter of vehicle. Accordingly, writ petition stands disposed of.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

GAURAV S./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09.04.2024
Transmission Date	NA