IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14210 of 2023

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Vikash Prasad Yadav Son of Basudev Yadav, Resident of village - Lasanpur Dagarua, P.s. - Dagarua, District - Purnia.

... ... Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Excise Department, Government of Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Excise Commissioner, Bihar, Patna.
4. The Inspector General of Police, Bihar, Patna.
5. The District Magistrate -cum- Collector, Kishanganj.
6. The Superintendent of Police, Excise Kishanganj.
7. The S.H.O., Excise P.S. Kishanganj.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anuj Kumar

For the Respondent/s : Mr. Kumar Manish SC 5

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA

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

Date : 10-01-2024

In the instant petitioner the petition has prayed for following reliefs:

> A. writ in the nature of CERTIORARI or any other appropriate writ/s, order/s direction/s quashing the following:
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> i. The order dated 19.06.2023 passed by the Excise Commissioner, Bihar, Patna (Respondent No. 3) in Excise Appeal No. 83/2023 as contained in Memo No. Excise Appeal Case No. 83/2023 -75, Patna dated

19.06.2023 whereby and where under he has upheld the confiscation order dated 08.04.2023 passed Confiscation Case No. 960/2022 District Magistrate-cum- 960/2022 by the District Magistrate-cum-Collector, Kishanganj, whereby and where under he directed the concerned Respondent Authorities to initiate confiscation proceeding against the Petitioner's Scorpio vehicle bearing registration no. BR11PB 7463, Chassis No. MA1TA2TDKK2F15022, Engine No. TDK4F78067 which was seized in connection with Kishanganj Excise P.S. case no. 334/2022 registered under section 30(a), of Bihar Prohibition and Excise Amended Act 2018.

B. A writ in the nature of MANDAMUS or any other appropriate writ/s, order/s directing the Respondent Authorities the following:
i. To release the Petitioner's Scorpio vehicle bearing registration no. BR11PB 7463, Chassis No. MAITA2TDKK2F15022, Engine No. TDK4F78067 which was seized in connection with Kishanganj Excise P.S. case no. 334/2022.
ii. To hold that the orders/ actions (Annexure-4) of the Respondent Authorities are not tenable in the eye of law and violation of Article 300A of the Constitution of India.
iii. To hold that the orders / actions (Annexure-4) of the Respondent Authorities amounts to double jeopardy.
iv. To hold that the orders dated 19.06.2023 of the Respondent Nos. 3 respectively are null and void.
C. To any other relief/s to which the Petitioner is found entitled to.

2. Petitioner’s motor vehicle - Scorpio bearing Registration No. BR11PB7463 was seized as it was involved in transit of 43.950 litres of liquor in the light of Section 30 (a) of Bihar Prohibition and Excise Act, 2016 read with amended Act, 2018, such a case was registered with Kishanganj Excise P.S Case No. 334 of 2022. Petitioner was under custody in connection with the aforementioned offences under the Excise Act, 2016. During his custody the confiscating authority proceeded to pass confiscation order on 08.04.2023. Thereafter, petitioner preferred an appeal before the appellate authority under Section 92 of Excise Act, 2016 in which also he had suffered an order on 19.06.2023. The subject matter of motor vehicle was auctioned on 19.08.2023. In this backdrop, the petitioner has presented this petition.

3. Learned counsel for the petitioner submits that confiscating authorities order and consequential order including auction proceedings are bad in law. The concerned authority should have imposed penalty instead of proceeded to auction the subject matter of motor vehicle. Other than this, no point has been urged in support of challenge to the appellate authority's order dated 19.06.2023 and confiscating authority's order dated 08.04.2023. For the release of the subject matter of the motor vehicle he has sought for the writ of mandamus.

4. Learned counsel for the respondent resisted the aforementioned contentions and submitted that no infirmity is pointed out by the learned counsel for the petitioner in respect of confiscating authority' order, appellate authority's order and he has not questioned the validity of the auction proceedings therefore, no interference is called for.

5. Heard the learned counsel for the respective parties, the petitioner has not apprised this Court any infirmity in the confiscating authority's order except to the extent that he was not heard in the matter. The same contention was urged before the appellate authority. Be that as it may the petitioner has contended in the memorandum of appeal even on merits and the same has been taken note off by the appellate authority and proceeded to affirm the order of the confiscating authority.

6. It is to be noted that petitioner has not pointed out any legal or a factual infirmity in the aforementioned proceedings. Further, it is to be noticed that recovery of 43.950 litres and it is not disputed. If the petitioner had questioned the validity of auction proceedings in that event we could have examined the quantum of penalty, further we could have examined whether confiscation proceedings read with the confiscation of the subject matter of motor vehicle and its auction so as to remand the matter and asking concerned authority to impose penalty instead of proceedings of the auction of the vehicle having regard to the quantum of liquor seized. At this distance of time and the fact that third party right has already created by virtue of auction proceedings, it is not feasible to interfere and remand the matter for modification of the confiscating authority's orders or appellate authority's order so as to impose maximum penalty provided under the statute to the extent of sum of Rs. 5,00,000/- (Five lakhs).

7. Accordingly, the present writ petition stands dismissed.

(P. B. Bajanthri, J)

(Ramesh Chand Malviya, J)

Mayank/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.01.2024
Transmission Date	NA