IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.599 of 2022

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Abdul Rahman Son of Abdul Rashid Resident of Mohalla- 108 Pilkhana 2nd bylane Howrah, Golabari, P.S.- West Howrah, District- Howrah, State- West Bengal.

... ... Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Department of Excise, Bihar at Patna.
2. The Additional Chief Secretary-cum- Special Superintendent Excise Bihar at Patna.
3. The Commissioner Excise Bihar at Patna.
4. The Collector-cum- District Magistrate Nawada at Nawada.
5. The Superintendent of Excise Nawada at Nawada.
6. The Superintendent of Police Nawada at Nawada.
7. The Inspector Bihar Excise Check Post Razauli District- Nawada.
8. Ram Lagan Singh, S/o Ramcharit Singh, R/o Shivpuri, LBS Nagar, P.O. Shastri Nagar, Patna- 800023 (Bihar).

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rakesh Kumar Soni, Advocate
For the Respondent/s	:	Mr. Vikash Kumar, SC-11
		Mr. Akash Chaturvedi, AC to SC-11
For Respondent No.8	:	Mr. Dharmendra Choubey, Advocate

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

ORAL ORDER

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

14 16-01-2024

1. Petitioner is owner of the vehicle Mahindra (XUV) bearing registration no. WB 12BA-9777 (for short ‘subject matter of vehicle’).

2. The subject matter of vehicle was seized for the offences under the Excise Act on 22.10.2020. Notice was issued to the petitioner on 08.12.2020 in respect of confiscation.

Petitioner filed CWJC No.3349/2021 on 28.01.2021 and it was disposed on 18.02.2021 relegating petitioner to confiscating authority. Confiscating Authority proceeded to confiscate the subject matter of vehicle on 08.04.2021.

3. On 08.07.2021 show-cause notice was issued in the newspaper publication in respect of auctioning the subject matter of motor vehicle and it was auctioned on 22.07.2021. Thereafter, the petitioner is stated to have filed appeal before the appellate authority and he had suffered an order on 06.09.2021.

4. Learned counsel for the petitioner submitted that the subject matter of vehicle was purchased on 10.02.2020, it was involved in excise offence on 22.10.2020 in so far as illegally possessing 375ml Indian made foreign liquor. It is submitted that for possession of illegal 375ml the respondents cannot resort for confiscation of the vehicle valued about sum of Rs.13 lacs. It is also submitted that subject matter of vehicle was sold in auction for a meagre sum of Rs.2,15,000/-.

5. Having regard to the fact that 375ml of Indian made foreign liquor has been seized from the possession of the subject matter of motor vehicle and confiscating such a huge worth vehicle is highly arbitrary and illegal. It is also submitted that the subject matter of vehicle was driven by driver of the

petitioner and petitioner was not at all involved either directly or indirectly. With reference to confiscation proceeding the confiscating authority should have imposed some penalty instead of confiscating vehicle.

6. It is also submitted that all the proceedings are held in arbitrary manner like a confiscating authority has not applied his mind with reference to the seizure of 375ml liquor read with the confiscation proceedings and the same was not apprised by the appellate authority that apart while assessing auction of the subject matter of motor vehicle it was done Rs.2,15,000/- and it would be too meagre and in the arbitrary manner. Therefore, prima facie there must be some collusion among the officials while disposing the subject matter of vehicle at through away price of Rs.2,15,000/- when it is worth about Rs.12,40,932/- as determined for identical motor vehicle by an Insurance Company.

7. Per contra, learned counsel for the respondents resisted the aforementioned contentions and submitted that there is no infirmity in so far as order of the confiscating and appellate authority and so also auction proceedings it is submitted that the aforementioned action is quasi judicial functions of the concerned authority under the Excise act read

with the Rules. Both the officials have adhered to the provisions of the excise act 2016 and rules, 2021 and 2022.

8. Heard the learned counsel for the respective parties.

9. The subject matter of vehicle was seized and confiscated in connection with recovery of 375ml IMFL liquor. The petitioner who is owner and was not driving the vehicle at the time of seizure of the subject matter of motor vehicle. If at all the any action is required to be taken it has to be taken against the driver, since recovery of liquor is only 375ml and not commercial quantity so as to seize motor vehicle.

10. Confiscation of subject matter of motor vehicle and auction at through away price is highly arbitrary decision of the official respondents. At the best the official respondent should have resorted to imposition of penalty instead of confiscation and auctioning the subject matter of motor vehicle and realizing meagre amount of Rs.2,15,000/- when the value of the motor vehicle as on the date of auction is Rs.12,43,932/-

11. Further we noticed that before auction proceedings are undertaken by the official respondents, no notice has been issued to the petitioner on the other hand public

notice was notified in the newspaper on 08.07.2021. We have noticed that as on 08.07.2021 the date on which newspaper publication was undertaken for the purpose of auctioning the subject matter of motor vehicle petitioner's appeal was pending consideration before the appellate authority as is evident from the record, appeal was decided on 06.09.2021. In all fairness, the auctioning authority should have waited till disposal of appeal.

12. The petitioner has made out a case that there are arbitrary decisions in passing impugned orders which are subject matter of the present litigations. On this score impugned orders are set aside, the concerned authority is hereby directed to pay the value of the motor vehicle which has been reassessed by the competent authority and it was determined at Rs.12,40,932/-. The same shall be paid to the petitioner along with simple interest at the rate of 6% per annum from the date of seizure of the vehicle on 22.10.2020 till payment is made.

13. Confiscating authority is hereby directed to take a fresh decision in so far as imposition of penalty for the alleged seizure of liquor of 375ml of IMFL, such action shall be taken within a period of three months from the date of receipt of this order. Confiscating Authority is hereby directed to issue a

formal notice relating to date of hearing and petitioner is permitted to file his written statement before the confiscating authority, thereafter the confiscating authority is hereby directed to pass a detailed speaking order in the event of imposing any penalty in terms of money.

14. With the above observation the present writ petition stands disposed of.

(P. B. Bajanthri, J)

(Ramesh Chand Malviya, J)

Prakash Narayan

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