

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18089 of 2024

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Santosh Singh, Son of Late Devnandan Singh, Resident of Village- Parsauni
Khas, P.O.- Manbodh Parsauni, P.S.- Uchkagaon, District- Gopalganj.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary and Excise Department,
Government of Bihar, Patna.
2. The District Magistrate, Gopalganj
3. The Superintendent of Police, Gopalganj
4. The District Transport officer, Gopalganj
5. The Station Head Office, Gopalpur Police Station, Gopalganj.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr. Rajeev Ranjan, Advocate
For the Respondent/s : Mr. Sriram Krishna, AC to SC-11

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE S. B. PD. SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 05-12-2024

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

*“I. To issue an appropriate writ in the
nature of mandamus commanding and directing the
respondent authorities to release the BAJAJ
PLATINA 110 motorcycle bearing Engine no.:-
PFXPNG35105, Chassis No.
MD2B77AX7NPG09445, registration No. BR 28AA
9827, in favour of the petitioner, which has been
seized in connection with Gopalpur P.S. Case No.
216/2023 dated 27.08.2023 Registered under*



sections 30(a) of the Bihar Prohibition and Excise Act 2022 and also during pendency of the confiscation case if any arising out of the instant case.

II. Any other order or Orders.”

2. On 29.11.2024, we have passed the following orders:

“The Superintendent of Police, Gopalganj, is hereby directed to file his personal affidavit as to why the subject matter of vehicle bearing Registration No.BR28AA9827 has been seized in the absence of any recovery of liquor from the said vehicle. If no liquor is recovered from the aforementioned vehicle in that event he is hereby directed to release the subject matter of vehicle in favour of the owner forthwith. If the police departments are disputing to the extent that subject matter of vehicle is involved in the excise offence and certain amount of liquor has been seized in that event necessary details shall be filed along with the documents. Further, whether confiscation proceeding has been initiated and completed or not. This may also be indicated in the affidavit to be filed. Such affidavit be filed before the next date of hearing.

2. Re-list this matter on 03.12.2024.

3. Copy of this order shall be given to the learned Standing Counsel (11) appearing for the State.”



3. Pursuant to our order dated 29.11.2024, Mr. Avdhesh Dixit, Superintendent of Police, Gopalganj is present in the Court. He has made a statement that subject matter of vehicle has been released in favour of the petitioner. Due to lack of knowledge, Investigating Officer has seized the vehicle.

4. It is a serious misconduct committed by the Investigating Officer without having knowledge of the relevant law. The vehicle was seized and kept in the Police custody for more than one year. At the same time, the Superintendent of Police has not undertaken any review proceedings insofar as seizure of the vehicle and what are the steps taken on behalf of department. Due to which the vehicle was lying in the Police station yard, resultantly, seized vehicle's value depreciated over time due to its exposure to nature and for not operating for more than one year.

5. Taking note of these facts and circumstances, the Superintendent of Police, Gopalganj is hereby directed to take necessary refresher course to his subordinates, who are all involved insofar as seizure of the vehicles or premises for the offences under the Bihar Prohibition and Excise Act or for any other offences as to what are the steps to be taken in accordance with law. That apart, unnecessary pile up of seized vehicles and



exposure to nature like Sun, rain & dust, resultantly value of the vehicle would be depreciated. That apart, we have come across Police officials are misusing or abusing the seized vehicle by using such vehicles for their personal use. In one of the case petitioner has produced G.P.S. data and video clipping. This is also deprecated. On this count, the Superintendent of Police, Gopalganj is hereby directed to undertake necessary steps in suggestion/advising the subordinates by means of refresher course. He has to ascertain as to how many vehicles are lying under his jurisdiction and see that the vehicles are one way or the other it should be disposed in favour of the litigant or it should be auctioned and the auction amount shall be remitted in the nationalized bank so as to avoid depreciation value of the vehicle. If a seized vehicle is not produced in Court, a Magistrate can pass orders for its disposal. A Magistrate can also pass orders for the return of a seized vehicle if necessary bonds, securities, or guarantees are provided. If a seized vehicle is not claimed by the owner, accused, insurance company, or any other third party, Magistrate can auction it off. In fact the seizure of vehicles by Police officers & other Government officers has been a matter of great legal concern in recent years. The Police stations around the country are now being converted



into dumping yards for seized vehicles with confiscated vehicles gathering dust over a number of years. Piled-up impounded vehicles – A common site at Police stations.

6. Chandigarh Administration Police Department
issued standing order. It is reproduced hereunder:

**“CHANDIGARH ADMINISTRATION
POLICE DEPARTMENT**

STANDING ORDER no.
49/2023

Subject:- *Regarding disposal of seized/recovered/impounded/un-claimed Motor Vehicles lying in Police Stations and Traffic Lines.*

The vehicles involved in crimes, accidental cases, lying unclaimed/abandoned at public places or impounded for traffic violations which are taken into custody by the Police are kept in Police Stations and Traffic Lines for a long period and sometimes for years together as the owners/claimants of such vehicles do not get their vehicles released or due to the non-identification of the registered owners in case of abandoned or unclaimed vehicles. Even a well maintained vehicle loses its road worthiness, if it is kept stationed in the Police Station/Traffic Lines for a long time and is converted into junk. The Hon'ble Supreme Court of India has issued directions for early disposal of recovered/seized vehicles in writ petition(c) No. 14 of 2008. Copy of which is enclosed.

1. Normally the vehicles are seized/taken into possession by the Police in the following circumstances: -

- i. Accident cases.*
- ii. Theft cases.*
- iii. Other IPC cases.*
- iv. Local & Special Law cases.*
- V. Under Section 25 Police Act.*
- vi. Under Section 102 Cr.P.C.*
- vii. Under section 207(i) of MV Act 1988.*

2. Majority of these vehicles is taken on Superdari by their owners or got released by paying the traffic violation fines and submission of relevant documents except where the owner is unknown/untraceable or cases in which the owner has already claimed insurance. In all such cases, the following procedure should be adopted to dispose of the vehicles:-

(a) Information with regard to vehicles insured in the country is available with the Insurance Information Bureau set up by the Insurance Regulatory and Development Authority (IRDA). The Insurance Information Bureau has installed a toll free number is 1800 425 4734



(Short Code: 15526), SMS Gateway number is 9246811113 and Web Mode- IIB portal: www.iib.gov.in as per the directions of the Hon'ble Supreme Court. Upon recovery/seizure of a vehicle (the insurance and ownership details of which are not known) in the Police Station/Traffic Lines, the Investigating Officer/Traffic Inspector Admin shall call this toll-free number and obtain details of the Insurance Company and the owner.

(b) After ascertaining the contact details of the Insurance Company and the owner, Investigating Officer/Traffic Inspector Admin shall inform both of them about recovery. This information may be sent by telephone, e-mail or post.

(c) After receipt of this information, the Insurance Company may apply for the release of the seized/recovered vehicle in the trial court as per law (citing the directions of the Hon'ble Supreme Court in the above-mentioned writ petition, if required) or in the court designated for vehicle impounded/ seized for traffic violations and for failing to produce driving license/ registration certificate.

(d) On receipt of release order of the vehicle from the court, the officer-in- charge of the Police Station/Traffic Inspector Admin or an officer deputed by him in this behalf, shall prepare a detailed memo in the presence of the representative of the Insurance Company concerned. The memo will contain the following details: -

- (i) Type of vehicle, its make, model and color.
- (ii) Engine Number,
- (iii) Chassis Number.
- (iv) Registration Number:
- (v) Description of electronic or other accessories fitted in the vehicle.
- (vi) Tracing of Engine No. & Chassis Number (to capture the imprint thereof).
- (vii) Name of the owner and address as per the Registration Certificate, alongwith his contact details.
- (viii) Name and address of the Insurance Company.
- (ix) Name and address of the Insurance Company's representative.

The memo will be signed by the Police officer who has prepared the memo and the representative of the Insurance Company.

(e) The vehicle will be photographed from all sides as well as from the interior. The photographs will capture the make, model, color, Registration number, Engine number and Chassis Number. In case of accident, all points of impact should be photographed, to be able to fully prove the nature and extent of the damage. In case of other IPC crimes, which have allegedly occurred inside the vehicle, sufficient number of photographs of the relevant portion of the interior of the vehicle will be taken.



(f) In addition to photography, videography will also be done carefully capturing all details as mentioned above.

(g) Digital copy of the photographs and the video footage shall be preserved in two CDs, one of which will be placed in the case file or the trial court and other copy will be preserved in the Police Station/office of Traffic Inspector Admin. Hard copy of the photographs shall be got printed and submitted in trial court as secondary evidence, alongwith a report regarding release of the vehicles. The CDs containing photographs and video file shall be preserved for two years after the completion of the trial proceedings or disposal of subsequent appeals, whichever is earlier.

(h) If any vehicle is also a case property in any other case, in the same Police Station or elsewhere, same procedure shall be followed in every case and a detailed Panchnama, Photography and Videography will be prepared which may be used as secondary evidence during the trial with a view to dispense with the physical production of the vehicle during trial.

(i) After completing the documentation as above and fulfilling all other terms and conditions of the release order, the vehicle shall be released to the concerned after noting his contact details and taking his signature in the register as per Annexure-A. No vehicle shall be released unless the required documentation as described above has been completed in every aspect. The entire process from preparation of memo, photography and videography will be completed at the earliest and in no case later than 15 days from the date of release order or the request received from the representative of the Insurance Company, whichever is later.

3. In case where the vehicle is not claimed by the accused, owner, the Insurance Company or by any third person within three months of the seizure/recovery/impounding, the IO through Station House Officer of the concerned Police Station or the Traffic Inspector Admin shall apply to the Magistrate in whose court the trial is pending, or to whom its seizure was reported, for ordering disposal of such vehicle in accordance with the provisions of Section 451, 457, 458 and 459 of the Criminal Procedure Code - 1973 which are reproduced as under :-

Section: 451 Order for custody and disposal of property pending trial in certain cases.

When any property is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient to do so, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

Section: 457 Procedure by police upon seizure of property.



(1) Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property.

(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation.

Section: 458 Procedure where no claimant appears within six Months.

(1) If no person within such period establishes his claim to such property, and if the person in whose possession such property was found is unable to show that it was legally acquired by him, the Magistrate may by order direct that such property shall be at the disposal of the State Government and may be sold by that Government and the proceeds of such sale shall be dealt with in such manner as may be prescribed.

(2) An appeal shall lie against any such order to the Court to which appeals ordinarily lie from convictions by the Magistrate.

Section: -459 Power to sell perishable property.

If the person entitled to the possession of such property is unknown or absent and the property is subject to speedy and natural decay, or if the Magistrate to whom its seizure is reported is of opinion that its sale would be for the benefit of the owner, or that the value of such property is '[less than five hundred rupees], the Magistrate may at any time direct it to be sold, and the provisions of sections 457 and 458 shall, as nearly as may be practicable, apply to the net proceeds of such sale.

The directions of the Hon'ble Supreme Court in the instant case may be cited in such application, if required. On receipt of court order/approval, immediate steps be taken for disposal of the seized/recovered/ impounded vehicle, as per existing law, norms and guidelines.

4. Disposal of vehicles as peras per Motor Vehicles **(Registration and Functions of Vehicle Scrapping Facility) Rules, 2021** notified by Ministry of Road Transport and Highways (MoRTH) New Delhi, vide their Number G.S.R.653 (E) dated 23rd September, 2021:



i. *Criteria for scrapping of vehicles-The following vehicles may be offered for scrapping to the Registered Scrapper:*

- a. *Vehicles which have not renewed their Certificate of Registration in accordance with rule 52 of the Central Motor Vehicles Rules, 1989.*
- b. *Vehicles which have not been granted a certificate of fitness in accordance with rule 62 of the Central Motor Vehicles Rules, 1989.*
- c. *Vehicles which have been damaged due to fire, riot, natural disaster, accident or any calamity, following which the registered owner self certifies the same as scrap.*
- d. *Vehicles which have been declared obsolete or surplus or beyond economic repair by the central or state Organizations of the Government and have been offered for scrapping.*
- e. *Auctioned, impounded or abandoned vehicles by any enforcement agency.*

ii. *Scrapping Procedure - The scrapping of vehicles shall be carried out by a Registered Scrapper in respect of all End-of-Life Vehicles, by the following procedure, namely: -*

- a) *The registered owner or the authorized representative shall hand over the vehicle together with an application as per Form-2 in two originals to the Registered Scrapper or the designated Collection Centre for deposit and further treatment of the vehicle.*
- b) *If the vehicle does not have a valid registration, then the Registered Scrapper or its designated center shall match the identity of the registered owner as per the VAHAN database with the person handing over the vehicle and receive the vehicle and issue a receipt through digital platform linked to VAHAN database.*
- c) *Vehicles impounded by an enforcement agency, shall be handed over the Registered Scrapper.*

iii. *Issuance of Certificate of Vehicle Scrapping.*

- a) *The Registered Scrapper, after completing the necessary treatment, shall issue a digital Certificate of Vehicle Scrapping including a digital photograph of the cut out of the chassis, in Form- 4 to update the national register, VAHAN Database and inform the competent authority of the State Government or Union territory Government for updating of records.*
- b) *A separate record of the scrapped vehicles shall be maintained on the VAHAN database by the Central Government.*

The request for the disposal of seized vehicles after obtaining orders from the competent court shall be made to the concerned authority in view of the above policy.

5. Record of seized/released vehicle, Apart from entry in the Register No. 19 and



impound register maintained in Traffic Lines, a separate register shall be maintained in each Police Station/ Traffic Lines in the prescribed Performa (Annexure-A) to keep record of seized/recovered/ impounded/unclaimed vehicles containing details of the vehicles, namely make, model, color, engine No. and chassis No; particulars of the case in which seized/recovered; Name address & mobile number of the person from whose possession the vehicle has been seized etc. Such register shall also be maintained in the Police Posts.

6. Regarding the vehicles already seized/ impounded and lying in various Police Stations/Traffic Lines it has been decided to compile their details and send the same to all Insurance Companies to enable them to apply for the release order. The SDPOS/ DSP Traffic Admin are directed to compile information of all seized/recovered/impounded/unclaimed vehicles lying in Police Station/ Traffic lines in Excel Spreadsheet in the prescribed Performa(Annexure-B) and send the same to the DSP/Crime. The procedure for release and disposal of these vehicles shall be the same as described in para 2 and 3 above, and as per Motor Vehicles (Registration and Functions of Vehicle Scrapping Facility) Rules, 2021 notified by Ministry of Road Transport and Highways (MoRTH) New Delhi on 23rd September, 2021.

7. Progress report regarding seized/recovered/impounded/ unclaimed vehicles shall be sent by every Police Station/ Traffic Lines as part of Weekly Crime Diary containing the following details: -

(i) Number of vehicles in possession of Police on the first day of the week.

(ii) Number of vehicles seized during the week.

(iii) Number of cases of accidents involving death or bodily injury in which report in Form No. 54 sent to the Insurance Companies and the Claims Tribunal as per Rule No. 150 A as amended by the MoRTH vide their notification issued vide GSR-164(E) dated 25.02.2022 for adopting the procedure for investigation for motor vehicle accidents which has come to force w.e.f 01.04.2022.

(iv) Number of the other cases in which information sent to the Insurance Companies and the owner of the vehicles.

(v) Number of vehicles released on Superdari during the week.

(vi) Number of vehicles in possession in Police on the last day of the week

8. It shall be necessary to inform the Ld. District and Sessions Judge, Chandigarh quarterly through SSP, Chandigarh and SSP Traffic in case the concerned Illaqa Magistrate does not allow the application/does not issue any order on the application moved by the I.O./Inspector Traffic Admin for disposal of vehicle which is not claimed by the owner, accused, insurance company or by any third person within three months of the seizure/recovery of such vehicle. The Dy.S.P./Crime shall give the detail of such rejection orders/non-disposal of the said application of IO/Inspector Traffic Admin to the SSP Chandigarh/ SSP Traffic for the abovesaid purpose with the assistance of A.DA. (Legal).

9. The SSP, Chandigarh/ SSP Traffic may also consider for constituting a Special Staff at the Police Station level / Traffic Lines for disposal of



seized/recovered/Impounded vehicles in accordance with the directions of the Hon'ble Supreme Court, who shall submit a monthly report to the SSP before the 10th of every month through respective S.H.O. and SDPO/ Traffic Inspector Admin and DSP Traffic Admin. The MOB as well as DSP/Crime shall be responsible for compiling the relevant statistics and put up the figures of seized/recovered/released vehicles to the undersigned every month to facilitate monitoring at the level of Police Headquarters.

Utmost urgency may be accorded to the compliance of the above mentioned judgment of the Hon'ble Supreme Court. Any leniency shall be viewed seriously.

*Director General of
Police
U.T. Chandigarh*

No. 5305-60/HAC/UT Chandigarh, dated Chandigarh the; 09.08.2023."

In the light of aforementioned guidelines & disposal of property in criminal cases (under Sections 451, 452 and 457 of Cr.P.C. and under Special Act) written by Mr. S.S. Upadhyay, former District Judge may also through some light on the subject. Police Department of State of Bihar may also issue guidelines after due deliberation within a period of six months from today to over come various issues.

7. In the present case, it is a case for imposition of cost as well as damages for unnecessarily harassing the petitioner for more than one year in seizing his vehicle and it is contrary to excise law and it is not disputed by the Respondents. The Respondents are hereby directed to pay damages a sum of Rs. 25,000/- (Rs. Twenty Five Thousand) and cost of the present litigation is quantified at Rs. 25,000/- (Rs. Twenty Five Thousand). The overall Rs. 50,000/- (Rs. Fifty Thousand) shall



be paid to the owner of the subject matter of vehicle within a period of six weeks from the date of receipt of this order.

8. With the above observation, Writ petition stands disposed of.

9. Copy of this order shall be forwarded to the Additional Chief Secretary / Principal Secretary / Secretary, Home, Transport, Excise Departments and D.G.P. State of Bihar, Patna for information and for taking necessary steps.

(P. B. Bajanthri, J)

(S. B. Pd. Singh, J)

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AFR/NAFR	A.F.R.
CAV DATE	N.A
Uploading Date	11.12.2024
Transmission Date	N.A

