

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1294 of 2024

Arising Out of PS. Case No.-74 Year-2024 Thana- Excise P.S. District- Darbhanga

Birendra Kumar Tiwari Son of Late Ramchandra Tiwari R/O Vill.- Gorari,
P.S.- Karakat, Dist.- Rohtas, Bihar- 802214

... .. Petitioner/s

Versus

1. The State of Bihar through The Chief Secretary, Bihar Government, Patna Bihar
2. The Director General of Police, Bihar at Patna Bihar
3. The Assistant Commissioner, Excise Prohibition, Darbhanga Bihar
4. The Superintendent of Police, Dist.- Darbhanga Bihar
5. The S.H.O., P.S.- Excise Prohibition Benipur, Dist.- Darbhanga Bihar
6. The I.O., P.S.- Benipur, Dist.- Darbhanga Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Praveen Kumar, Advocate
For the Respondent/s : Mr. Gp.16

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

2 06-05-2025 Heard the parties.

2. This application has been filed for quashing the FIR in connection with Benipur Excise P.S. Case No. 74 of 2024 for the offence alleged under Section 30(a) of the Bihar Prohibition and Excise (Amendment) Act, 2018, on the ground that he has been falsely implicated in the present case as he has already sold the vehicle in question from which the recovery of illicit liquor has been made in the year 2016.

3. This application is disposed of with liberty to the petitioner to approach the S.S.P. Darbhanga along with the



relevant documents and the S.S.P., Darbhanga will get the matter properly investigated and if he finds substance in the representation of the petitioner and the contention of the petitioner that the vehicle in question was sold to one Brajkishore Singh in the year 2016 itself, then appropriate final form may be submitted exonerating the petitioner. If the ownership has been transferred and the petitioner is still the registered owner of the vehicle in question then also he cannot be prosecuted by the police.

4. While considering the case of the petitioner, the police will consider the judgment of the Hon'ble Supreme Court in the case of *Karikho Kri vs. Nuney Tayang and another* reported in *Civil Appeal No. 4615 of 2023 with 4716 of 2023* wherein the Hon'ble Supreme Court while deciding the Civil Appeal on Election Petition has held as under:

“Mere failure to get registered the name of the new owner of already registered vehicle does not mean that the sale/gift transaction would stand invalidated and such a vehicle, despite being physically handed over to the new owner, cannot, by any stretch of imagination, be treated as still being in the possession and control of the former owner. Once it is accepted that the three vehicles in question were either gifted or sold before the filing of the nomination by Karikho Kri, the said vehicles cannot be considered to be still owned by Karikho Kri's wife and son for purposes other than those covered by the Act of 1988. However, the High Court did not take note of this distinguishing factor in the case on hand. In Kisan Shankar Kathore vs. Arun



Dattatray Sawant and others, the vehicle details of which had been suppressed by the returned candidate, was actually owned and possessed by his wife and such suppression was, accordingly, held against him. Presently, the High Court itself concluded that the three vehicles in question were transferred, be it by way of sale or gift. The vehicles were, therefore, not owned and possessed in praesenti by the dependent family members of Karikho Kri at the time of the filing of his nomination. This point of distinction was completely lost sight of by the High Court but, in our considered opinion, it made all the difference.”

5. With the aforesaid observation and direction, this application is disposed of. It is also submitted that petitioner has already been released under Section 41 of the Cr.P.C.

6. Accordingly, this application is disposed of with the aforesaid direction.

(Sandeep Kumar, J)

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