IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15682 of 2024

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Sunil Kumar, son of Kamleshwar Yadav, resident of Abadganj, Near Mission School, PO-Daltonganj, Medininagar, PS- Daltonganj, District- Palamu (Jharkhand).

... ... Petitioner/s

Versus

1. The State of Bihar through the Secretary Prohibition and Excise Department, Govt. of Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Excise Commissioner, Bihar, Patna.
4. The Assistant Excise Commissioner, Gaya.
5. The Collector-cum-District Magistrate, Gaya.
6. The Senior Superintendent of Police, Gaya.
7. The Sub-Divisional Officer, Sherghati, Gaya.
8. The SHO/Officer in Charge, Dobhi PS, Gaya.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Madhukar Mishra, Advocate
For the Respondent/s	:	Mr. Sita Ram Yadav, G.P-16
		Mr. Rakesh Kumar Shrivastava, AC to GP-16

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

Date : 17-01-2025

In the instant petition, petitioner has prayed for the following relief(s):-

i) To set aside the order dated 15.02.2024 passed by the learned Assistant Commissioner of Excise, Gaya in Memo No. 125 dated 01.04.2023 in Excise

Confiscation Case No. 841/2022, and the order dated 03.07.2023 passed by the Excise Commissioner, Patna in Excise Appeal Case No. 89/2023 in connection with Dobhi P.S. Case No. 663/22.

(ii) To direct the respondents to release the seized Mahindra Bolero bearing Registration No. JH03L-5222, Engine No. GHF4A55091, Chassis No. MA1XA2GHKF5A22539, in favour of the petitioner, which was stolen on 18.02.2022 from the house of the brother in law of the petitioner and seized by Dobhi, Gaya PS on 30/07/2022.

(iii) To grant any other relief (s) as deemed appropriate under the law.

2. The relevant facts of the case as emerging from the record are that petitioner is the owner of Mahindra Bolero vehicle bearing Chasis no. MA1XA2GHKF5A22539, Engine no. GHF4A55091 which was registered with the Transport Department with Registration No. JH03L-5222. On 18.02.2022. The

Bolero vehicle of the petitioner was stolen from the residence of his brother-in-law namely Ankit Kumar. The petitioner, thereafter registered Nokha P.S. Case No. 47 of 2022 *(Annexure-1)* under Section 379 of the Indian Penal Code on 20.02.2022.

3. Further case of the petitioner is that the vehicle of the petitioner was later found with a new number plate bearing JH09F-2828 and it was seized by the Dobhi Police Station on 30.07.2022 for the alleged recovery of 1035 Kgs of Mahua Flower and 05 litres of illicit liquor and Dobhi P.S. Case No. 663 of 2022 *(Annexure-2)* was registered under Section 30(a) of the Bihar Prohibition & Excise(Amendment) Act, 2018.

4. It is submitted by learned counsel for the petitioner that without prior notice to the petitioner, the seized vehicle was confiscated by the Assistant Commissioner, Excise, Gaya in Excise Confiscation Case No. 841 of 2022 *(Annexure-3)*. It is further submitted

that as soon as the petitioner became aware of seizure of vehicle under Bihar Prohibition & Excise (Amendment) Act, 2018, he approached the Excise Court, Gaya who directed the Investigating Officer to submit a report in this regard. The Investigating Officer has submitted the report on 07.05.2023 *(Annexure-4)* stating that the petitioner had no role in the crime and the vehicle was stolen from the house of petitioner's brother-in-law and Nokha P.S. Case No. 47 of 2022 was registered in this regard.

5. The petitioner, thereafter filed an appeal before Excise Commissioner, Bihar in Excise Appeal Case No. 89 of 2023. The Excise Commissioner, vide order dated 03.07.2023 *(Annexure-7)* directed the seized vehicle to be released after imposition of appropriate penalty as may be decided by the District Collector, Gaya, after submission of prescribed form under Bihar Prohibition and Excise Rules, 2021 by the owner of the vehicle. The petitioner, thereafter filed an application

(Annexure-5) before the Excise Commissioner, Patna stating that his vehicle was stolen and F.I.R was registered in this regard. During investigation, the involvement of the petitioner was not found in the alleged crime under Excise Act and it was found that his vehicle was used with another false number plate by the accused and imposing a penalty of Rs. 48000/- is unjust and improper. However, no action was taken on the aforesaid application dated 03.04.2024.

6. *Per contra,* learned counsel for the respondent submitted that vehicle of the petitioner was confiscated in a confiscation proceeding after giving proper notice to the petitioner and as per direction contained in Letter No. 633 dated 25.01.2023 issued by the then Additional Secretary, Prohibition, Excise & Registration Department, Government of Bihar to the District Magistrates in Bihar. The petitioner has not submitted the application in Form-IV to get his vehicle

released as per Rule 12A of the Bihar Prohibition & Excise Rules, 2021 though being aware of the fact that his vehicle has been seized in an Excise case.

7. Before we consider the rival submission of the parties, it would be imperative to refer to the relevant statutory provisions and case laws:-

8. Sections 47, 56, 57B, 58, 61, 92, 93, 95 of the Bihar Prohibition and Excise Act, 2016 and the Bihar Prohibition and Excise Rules, 2021 are relevant statutory provisions in the aforesaid facts and circumstances.

9. **Section 47** provides for liability of the person who is under control of the vehicle knowingly permits it to be used for commission by any other persons of an offence punishable under provision of the Excise Act to punishment in the same manner as if he had himself committed the said offence. It reads as follows:-

> *"**47. Penalty for allowing premises, etc., to be used for commission of an***

> ***offence:-*** *Whoever, whether being a licensee under this Act or otherwise, and having the control or use of any house, room, enclosure, space, animal or conveyance, knowingly permits it to be used for commission by any other person of an offence punishable under any provision of this Act, shall be punishable in the same manner as if he had himself committed the said offence."*

10. **Section 56** of the Act provides for liability of seized vehicles, amongst other seized items, for confiscation. As per this Section, as it stood prior to amendment in 2022, vehicle used for carrying any intoxicant or liquor is liable for confiscation. The pre-amendment provision of Section 56 is relevant because alleged offence has been committed on 17.04.2021. Section 56 as stood prior to amendment in 2022, reads as follows:-

> ***"56. Things liable for confiscation.*** *Whenever an offence has been committed, which is punishable under this Act.-*
>
> *(a) any intoxicant or liquor unlawfully*

imported, transported, manufactured, sold, stored, possessed, material, utensil, implement, apparatus, package or covering and or the other contents, if any, of such receptacle, package or covering for the purposes of storing, manufacturing or labelling such intoxicant or liquer;

(b) any animal, vehicle, vessel or other conveyance used for carrying any intoxicant or liquor, or

(c) any premises or part thereof that may have been used for storing or manufacturing any liquor or intoxicant or for committing any other offence under this Act;

shall be liable to be confiscated in a manner prescribed under the provisions of the Act,

(d) The State Government, if deem necessary, may issue necessary directions, guidelines, Regulations and instructions with respect to mode and manner of search, seizure and confiscation."

(Emphasis supplied)

11. **Section 57B** as inserted in 2022, by way of amendment, provides that any vehicle used for committing any offence punishable under the

Prohibition and Excise Act and having been seized by any police officer or Excise Officer may be released by the Collector upon payment of such penalty as may be notified by the State Government. This Section is applicable to all pending confiscation proceedings by virtue of Explanation no. 2. This Section reads as follows:-

> ***"57B. Things or premises liable to be released upon penalty.****-(1) Any animal, vehicle, vessel or other conveyance used for committing any offence punishable under this Act that has been seized by any police Officer or Excise Officer may be released by the Collector upon payment of such penalty as may be notified by the State Government.*
>
> *(2) Any premises or part thereof used for committing any offence punishable under this Act that has been seized by any police Officer or Excise Officer may be released by the Collector upon payment of such penalty as may be notified by the State Government.*

(3) If the person concerned does not pay the penalty, then the Collector shall proceed to confiscate the said animal, vehicle, vessel or other conveyance and premises as per section-58.

Explanation 1*.- It shall not be a right of the accused to get his conveyance, item or premises released upon payment of the required penalty. The Collector, based upon a report by a police officer or an excise officer, may, for reasons to be recorded in writing, still refuse to release the said conveyance, item or premises and proceed ahead with confiscation and auction/destruction.*

Explanation 2*.-The Collector shall, from the date of this Amendment coming into force, close the on-going confiscation proceedings if the person concerned pays the penalty as notified and release such vehicle, conveyance or premises.*

Explanation 3*.-Such release shall not affect the outcome of trial, if any before the Special Court."*

(Emphasis supplied)

12. **Section 58** of the Act provides for the

procedure and conditions for confiscation of the vehicle or conveyance and other things by District Collector or Officer authorized by him. As per Sub-section 1 of Section 58, the officer seizing the vehicle is required to report to the District Collector without any reasonable delay and as per Sub-Section 2 if the Collector is satisfied, as per the report, that an offence under this act has been committed, he is authorized to confiscate the vehicle, but, as per Sub-section 3, only after giving reasonable opportunity to the person concerned for hearing. Section 58 reads as follows:-

> *"58. Confiscation by District Collector.-(1) Notwithstanding anything Contained in this Act or any other law for the time being in force, where anything liable for confiscation under this Act is seized or detained under the provisions of this Act, the officer seizing and detaining such property shall, without any reasonable delay submit a report to the District Collector who has jurisdiction over the said area;*

(2) On receipt of the report under sub-section (1), the District Collector if satisfied that an offence under this Act has been committed, may, whether or not prosecution is instituted for the commission of such an offence and whether or not a case is pending before any court, order confiscation of such property;

(3) The Collector shall, before passing an order under sub- section (2), give a reasonable opportunity to the person concerned, of being heard;

(4) While making an order of confiscation under sub- section (2), the District Collector may also order that such of the properties which the order of confiscation relates, which in his opinion cannot be preserved or are not fit for human consumption, be destroyed. Whenever any confiscated article has to be destroyed in conformity with these provisions, it shall be destroyed in the presence of a Executive Magistrate or officer ordering the confiscation or forfeiture, as the case may be, or in the presence of the Excise Officer not below

the rank of a Sub-Inspector;

(5) While making an order of confiscation under sub- section (2), if the District Collector is of the opinion that it is expedient in the public interest to do so, he may order the said property or any part thereof to be sold by public auction or dispose of departmentally and proceeds deposited with the State Government,

(6) The District Collector shall submit a full report of all particulars of confiscation to the Commissioner of Excise within one month of such confiscation."

(Emphasis supplied)

13. Section 61 provides that when an order for confiscation of any property, which includes vehicle also, has been passed under section 58 of the Bihar Prohibition and Excise Act, 2016 and such order has become final, the property gets vested in the State Government free from any encumbrance. Section 61 reads as follows:-

> *"61. **Confiscated articles to vest with the Collector.-** When an order for confiscation of any property has been passed under Section 58 and such order has become final in respect of the whole or any portion of such property, such property or portion thereof, as the case may be, shall vest with the State Government free from any encumbrance."*

14. **Section 92** provides for departmental appeal against the final orders passed by the authorities under the Act. The order passed by Excise Officer, lower in rank than District Collector, is appealable to District Collector within 60 days, order passed by District Collector is appealable to Excise Commissioner and order passed by Excise Commissioner is appealable to the State Government within 90 days. However, no second appeal is provided against an order passed by Excise Commissioner. Section 92 reads as follows:-

> ***"92. Appeals**.-(1) All final orders passed by any Excise Officer other than*

the Excise Commissioner or Collector under this Act, shall be appealable to the Collector within sixty days from the date of the order.

(2) All final orders passed by the Collector and Excise Commissioner shall be appealable to the Excise Commissioner and the State Government respectively within ninety days from the date of the order complained of. Provided that no second appeal shall lie against an order passed by the Excise Commissioner on appeal.

(3) The State Government may make rules in this behalf."

15. Section 93 provides for departmental revision. The revisional power has been vested with the State Government. Section 93 reads as follows:-

*"**93. Revision.**- The State Government may, on its own motion or on an application made to it, call for and examine the records of any proceeding before any excise officer or any document, including that relating to renewal or refusal of license or grant of*

> *permit, pass etc. under this act, for the purpose of satisfying itself as to the correctness and legality of any order passed in, and as to regularity of any such proceeding and may, when calling for such record, direct that the order be not given effect till the pendency of the examination of the record, so called for. After examining the record, the State Government may annul, reverse, modify or confirm such order, or pass such other order as it may deem fit."*

16. Under **Section 95** of the Bihar Prohibition and Excise Act, 2016, the Bihar Government is empowered to make rules to carry out the purposes of the Act. Bihar Prohibition and Excise Rules, 2021 has been made by Bihar Government under Section 95 of the Act. Rule 12A, as inserted in 2022 by way of amendment, provides for release of vehicle, conveyance etc. on payment of penalty. This Rule is applicable to all pending confiscation/auction proceedings by virtue of its Explanation. This Rule reads as follows:-

"12A. Release of Vehicles, Conveyance etc. on Payment of Penalty.- *(1) If any vehicles, conveyance, vessel, animal etc. has been seized by any police or excise officer under the Act, then in terms of Section 57B (1) of the Act, the Collector or an officer authorized by him upon receipt of an application in Form IV by the owner of the said conveyance or vehicle etc., may release the said conveyance or vehicle upon payment of such penalty as may be ordered by the Collector or the officer authorized by him.*

Provided, where it is not possible to ascertain the owner of the vehicle or the owner is not coming to claim the vehicle, the Collector or the officer authorized by him, after waiting for 15 days from the date of seizure, shall proceed to confiscate and auction the vehicle as per the provisions of the Act.

(2) The amount of penalty shall be as decided by the Collector or the Officer authorized by him. While imposing the penalty, he shall have due regard to the quantity of intoxicant recovered, involvement of the vehicle owner and the

latest insurance value of the vehicle. In no case, the penalty should be less than 10% of the insured value of the vehicle and more than Rs. 5 lakhs. The insured value is the value of the vehicle as assessed by the insurance company. Where, the insured value is not available or the Collector or the Officer authorized by him has reason to believe that the vehicle is undervalued, he shall get the valuation done by the District Transport Officer. In any case, the Collector shall not wait beyond 15 days from the date of seizure and if during this period, the accused/owner does not pay up the penalty, he shall proceed with the confiscation/auction."

(3) Notwithstanding above, if on a report by police officer or excise officer, the Collector or the officer authorized by him is satisfied that releasing the vehicle or conveyance shall not be in the public interest, he shall proceed ahead with the confiscation of the said vehicle or conveyance and its subsequent auction/disposal.

(4) Where the conveyance is such that its valuation/insurance is not possible,

the Collector or the officer authorized by him shall impose such fine as he deems fit. While imposing such fine, the Collector or the officer authorized by him shall have due regard to the economic status of the individual, nature of his involvement in the crime and the quantum of intoxicant recovered.

(5) Such penalty shall be, regardless of the outcome of the trial if any, before the Special Court, non-refundable.

(6) The owner of the vehicle/conveyance shall, after the release of the vehicle/conveyance, produce the vehicle/conveyance as and when required by the authorities.

Explanation, In all pending/ongoing cases of confiscation/auction of vehicles, the Collector or the officer authorized by him may give an opportunity to the existing owner to pay the aforesaid penalty and get the vehicle released. Upon satisfaction about ownership and upon payment of such penalty, the ongoing confiscation/auction proceeding may be dropped and the vehicle released."

(Emphasis supplied)

17. The bare reading of Section 56(b) of the Act clearly shows that any vehicle or conveyance can be seized and confiscated under the Bihar Prohibition and Excise Act, 2016 only when the vehicle has been used for carrying any intoxicant or liquor. Section 58(3) of the Act provides that during confiscation proceeding, the owner of the vehicle has to be given opportunity of being heard. Section 57 B(1) also provides that any vehicle, or other conveyance used for committing any offence punishable under the Act and seized may be released upon payment of penalty. Rule 12-A(2) of the Bihar Prohibition and Excise Rules, 2021 also provides that while imposing penalty under Section 57-B of the Act, the authority concerned is required to give due regard to the involvement of the vehicle owner.

18. The first and foremost thing, which emerges from the aforesaid discussion of the statutory

provisions, is that no vehicle can be seized or confiscated without its use in commission of any offence under the Bihar Prohibition and Excise Act, 2016. Under Section 30 of the Act, transport of illicit liquor or intoxicant is an offence and in commission of such offence, a vehicle can be used. As such, use of the vehicle in transport of illicit liquor/intoxicant is *sine qua non* for its seizure and confiscation. It also emerges that just use of the vehicle to carry intoxicant or liquor is also not sufficient for its seizure and confiscation. The involvement or connivance of the owner of the vehicle in such illegal use of the vehicle is also an essential prerequisite for confiscation of the vehicle or imposing any penalty for release of the vehicle. Such view has been consistently expressed by this Court in various judicial pronouncements under writ jurisdiction.

19. It is relevant to point out that in case of direct involvement of the owner of the vehicle in

prohibited use of the vehicle, he is made accused in the criminal case registered by the police. Even in case of his indirect involvement by way of permission for or connivance in use of his vehicle in commission of the offence, he is liable to be accused under Section 47 of the Act. As such, unless the owner of the vehicle is an accused in the case, the court can not hold that the owner of the vehicle is directly or indirectly involved in the prohibited use of the vehicle.

20. It is also pertinent to note that in the light of various pronouncements of this Court, Bihar Government has issued letter dated 07.02.2020 bearing Letter No. 13/HC-06- 55/2020-670. The letter has been written by Additional Chief Secretary, Home Department cum Prohibition, Excise and Registration Department to all District Collectors, Police Officers and Excise Officers. By this letter, the Government has clearly stated in para-2 of the letter that as per direction of this Court, such

vehicle, from which no liquor has been recovered, will not be confiscated. In para-3 of the letter, the Government has stated that when the vehicle was being driven by the driver in drunken condition but no liquor has been recovered from the vehicle, only the driver would be prosecuted under the Bihar Prohibition and Excise Act, 2016.

21. Coming to the case at hand, we find that on 18.02.2022 the Bolero vehicle of the petitioner was stolen and on 20.02.2022, the petitioner has filed a complaint in this regard which was registered as Nokha P.S. Case No. 47 of 2022 *(Annexure-1)*. The vehicle of the petitioner was later found with a new number plate bearing JH09F-2828 and it was seized by the Dobhi Police Station on 30.07.2022 for the alleged recovery of 1035 Kgs of Mahua Flower and 05 litres of illicit liquor and Dobhi P.S. Case No. 663 of 2022 *(Annexure-2)* was registered under Section 30(a) of the Bihar Prohibition &

Excise (Amendment) Act, 2018. Thereafter, the vehicle of the petitioner was confiscated by the Assistant Commissioner, Excise, Gaya vide order dated 15.02.2023 in Excise Confiscation Case No. 841 of 2022 *(Annexure-3)*. The petitioner came to know about the seizure of his vehicle under Bihar Prohibition & Excise (Amendment) Act, 2018 after confiscation proceeding, in April, 2023. The petitioner, approached before the Excise Court, Gaya who directed the Investigating Officer to submit a report in this regard. The Investigating Officer has submitted the report on 07.05.2023 *(Annexure-4)* stating that the petitioner had no role in the crime and the vehicle was stolen from the house of petitioner's brother-in-law and Nokha P.S. Case No. 47 of 2022 was registered in this regard. The petitioner, thereafter filed an appeal before the Excise Commissioner, Bihar, Patna in Excise Appeal Case No. 89 of 2023. The Excise Commissioner, vide its order dated 03.07.2023 *(Annexure-7)* directed the seized vehicle to be released in favour of the petitioner after imposition of appropriate penalty as may be decided by the District Collector, Gaya. The petitioner, thereafter filed an application before the Excise Commissioner, Patna stating that his vehicle was stolen and F.I.R was registered in this regard. During investigation, the involvement of the petitioner was not found in the alleged crime under Excise Act and it was found that his vehicle was used with another false number plate and imposing a penalty of Rs. 48000/- is unjust and improper. However, no action was taken on the aforesaid application of the petitioner.

22. We also find that against the petitioner/owner of the vehicle, there is no allegation of his direct or indirect involvement in commission of the alleged offence. Accordingly, he has not been arrayed as accused in the criminal case registered by the police.

23. In view of the aforesaid facts and

circumstances of the case, we find that the twin prerequisites for seizure and confiscation of a vehicle under the Bihar Prohibition and Excise Act, 2016-use of the vehicle in carrying/transporting the liquor or intoxicant and the consent or connivance of the owner of the vehicle in commission of the offence are not fulfilled. Consequently the vehicle in question is not liable to be seized and confiscated under the Act.

24. Hence, the impugned order is arbitrary and hit by Article 14 of the Constitution. It is also violative of Constitutional rights of the petitioner to hold property as provided in Article 300 A of the Constitution, which prohibits any deprivation of property without authority of law. The Bihar Prohibition and Excise Act in no way authorizes the official to seize or confiscate the vehicle in the alleged facts and circumstances of the case. Hence, the seizure and confiscation of the Bolero vehicle in question is without any authority of law. The

confiscation order, is accordingly liable to be quashed.

25. The concerned authority is hereby directed to release the vehicle of the petitioner bearing bearing Registration No. JH03L-5222, Chasis no. MA1XA2GHKF5A22539, Engine no. GHF4A55091 within a period of one week from the date of receipt of a copy of this order.

26. The petition is allowed, accordingly.

(S. B. Pd. Singh, J)

(P. B. Bajanthri, J)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	16/12/2024
Uploading Date	18/01/2025
Transmission Date	N/A