IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19322 of 2024

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Akhilesh Kumar Son of Sambhu Mahto Resident of Village- Jarahiya Rasalpura, P.S.- Sitamarhi, District- Nawada.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise Department, Government of Bihar, Patna.
2. The Commissioner, Excise Department, Govt. of Bihar, Patna.
3. The D.M., Nawada.
4. The D.C.L.R., Rajauli, Nawada.
5. The Officer Incharge, Akbarpur, Nawada.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pramod Kumar Verma, Advocate.
For the Respondent/s : Mr. Arvind Kumar, AC to GA-9.

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
C.A.V. JUDGMENT
(Per: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA)

Date : 19-03-2025

Heard both the parties.

2. The instant writ petition has been filed for quashing the order dated 13.10.2023 passed by D.C.L.R. Rajauli, Nawada in Case No. 38 of 2023-24 whereby and whereunder seized Scorpio bearing Registration No. BR-27-R-5373 has been confiscated and ordered for auction as well as to quash the order dated 22.02.2024 passed by the Excise Commissioner, Bihar, Patna in appeal bearing Excise Appeal No.169 of 2023 and to release the said vehicle in favour of the petitioner who is the registered owner of the said vehicle.

3. As per prosecution case, a Scorpio vehicle was standing in front of the house of accused Subodh Kumar, and certain articles were being unloaded by three persons. Additionally, a two wheeler was parked at the said location. The police arrested Subodh Kumar while the other two individuals, namely, Mukesh Kumar and Dhannu Kumar managed to flee from the spot. On search, there was alleged recovery of 87 liters of illicit foreign liquor from the vehicle in question bearing Registration No. BR-27-R-5373. On basis of the aforesaid facts, F.I.R. was registered on 17.02.2023 bearing Akbarpur P.S. Case No. 109 of 2023 under Section 30 (a) of Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as ‘the Act’) and the vehicle in question was confiscated and ordered for auction.

4. Learned counsel for the petitioner submitted that the petitioner has no concern with the offence and he had no knowledge regarding the occurrence as well as recovery of the illicit liquor from the vehicle in question. It is further submitted that no notice was served to the petitioner regarding the said order of learned D.C.L.R. Furthermore, the seized vehicle is lying in the concerned police station in open air causing its decay. It is also submitted that the petitioner has been deprived of his property without following the due process of law.

Moreover, the petitioner undertakes to produce the vehicle in question before the learned Trial Court on direction of the same.

5. Per contra, learned counsel appearing for the respondents submitted that the contentions raised by the petitioner are not tenable in light of the orders passed by the respondent authorities. It is, therefore, submitted that the order passed by the confiscating authority and the appellate authority are on basis of the materials available on record, and hence, no interference is needed. Furthermore, it is stated in the counter affidavit on behalf of the respondents that in confiscation proceeding the petitioner was served notice dated 09.08.2023 through paper publication but the petitioner failed to appear before confiscating authority. He has neither given explanation nor applied under Rule 12A of the Bihar Prohibition and Excise Rules, 2021. Hence, the said vehicle was confiscated on 13.10.2023.

6. In the instant case, there was recovery of 87 liters of illicit foreign liquor from the vehicle in question and consequently, the confiscation and auction proceeding thereof have been initiated and the petitioner alleged that he had no knowledge regarding the occurrence and confiscation proceeding and also no notice was served upon him and he is ready to deposit the reasonable fine for release of his vehicle.

7. It is pertinent to analyse the relevant statutory provisions of the Act. The bare reading of Section 56 (b) of the Act clearly shows that any vehicle or conveyance can be seized and confiscated under the Act only when the vehicle has been used for carrying/transporting 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 57B (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 12A (2) of the Bihar Prohibition and Excise Rules, 2021 also provides that while imposing penalty under Section 57B of the Act, the authority concerned is required to give due regard to the quantity of intoxicant recovered and involvement of the vehicle owner.

8. In light of the aforementioned discussion and considering the facts and circumstances of the case, we are of the opinion that instead of confiscation and auction of vehicle in question fine of Rs.2,00,000/- (Rupees Two Lakhs Only) is reasonable in the facts and circumstances of the case. Therefore, the petitioner is directed to pay a sum of Rs.2,00,000/- (Rupees

Two Lakhs Only) as fine within four weeks from the date of this order and then the vehicle shall be released in favour of petitioner.

9. Considering the alleged recovery and involvement of the vehicle owner/petitioner, the aforesaid order has been passed while invoking extra-ordinary jurisdiction under Article 226 of the Constitution of India for the reason that petitioner shall not be subjected to various proceedings under the Act and the Bihar Prohibition and Excise Rules, 2021 as amended in year 2022 and 2023, and the above direction is required to prevent the multiplicity of proceedings and in the interest of justice.

10. With above observations/direction, the present petition stands **disposed of.**

(Sunil Dutta Mishra, J)

(P. B. Bajanthri, J)

(P. B. Bajanthri, J)

Ritik/-

AFR/NAFR	NAFR
CAV DATE	06.03.2025
Uploading Date	19.03.2025
Transmission Date	NA