

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4040 of 2023

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Binit Kumar Son of Ashok Kumar Singh @ Ashok Kumar Resident of
Dwarika House Gangjala Ward No.- 17 P.O. and P.S.- Saharsa, District-
Saharsa.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Department of Excise and Prohibition Bihar, Patna.
2. District Magistrate Cum Collector, Saharsa.
3. Superintendent of Excise, Saharsa.
4. Superintendent of Police at Saharsa.
5. Officer-In-Charge Saharsa Police Station under District- Saharsa.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Diwakar Prasad Singh, Advocate

For the Respondent/s : Mr. Vivek Prasad, GP-7

Ms. Supragya, AC to GP-7

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE JITENDRA KUMAR

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE JITENDRA KUMAR)

Date : 30-01-2024

The present writ petition has been filed by the petitioner seeking following reliefs:-

“(i) Issuance of appropriate writ/order/direction for quashing the order dated 11.04.2022 passed by Revisional



Authority in Excise Revision NO. 16 of 2022 (Binit Kumar Vs. Excise Commissioner & Ors.).

(ii) Issuance of appropriate writ/order/direction for quashing the order dated 14.12.21 passed by Appellate Authority in Excise Appeal Case No. 822 of 2021 (Binit Kumar Vs. Collector, Saharsa & Ors.)

(iii) Issuance of appropriate writ/order/direction for quashing the order dated 14.08.21, passed by Collector, Saharsa, in Confiscation Case No. 102/2018-19

(iv) Any other relief or reliefs for which the petitioner be found entitled.”

2. The relevant facts of the case, as emerging from the record, is that while the petitioner was riding on a motorcycle, bearing Registration No. BR19K 5509, he was stopped by the police on suspicion and on search, 180 ML of Indian Made Foreign Liquor was recovered from the pant of the petitioner. Subsequently, the alleged illicit liquor and the vehicle in question were seized and an FIR bearing Saharsa Sadar P.S. Case No. 1006 of 2017 was registered on 26.09.2017 against the petitioner Binit Kumar. Thereafter, Confiscation Case No. 102 of 2018-19 was initiated by Ld. Collector-cum-District Magistrate, Saharsa, wherein, initially, the motorcycle of the petitioner was released provisionally in favour of the petitioner in the light of the order of this Court dated 18.01.2019, passed in C.W.J.C. No. 1231 of 2019. But subsequently, *vide* order dated 14.8.2021, passed in



Confiscation Case No. 102 of 2018-19, the motorcycle in question was confiscated and directed to be auctioned. The said order of confiscation and auction was challenged by the petitioner before the Appellate Authority i.e. the Excise Commissioner, Patna in Excise Appeal Case No. 822 of 2021. However, vide order dated 14.12.2021, passed in Excise Appeal Case No. 822 of 2021, the confiscation and auction order, passed by the District Magistrate-cum-Collector, Saharsa was upheld. The said appellate order dated 14.12.2021 was again challenged in Excise Revision bearing No. 16 of 2022 before the Additional Chief Secretary, Patna. In the revision, the vehicle in question was directed to be released on payment of 50% of the insurance value of the vehicle in question as non- refundable penalty.

3. Being aggrieved by the aforesaid orders, the present writ petition has been preferred by the petitioner.

4. Learned counsel for the petitioner submits that the petitioner is a registered owner of the vehicle in question and his vehicle has been arbitrarily seized and confiscated and directed to be auctioned. He further submits that the vehicle in question was no way used in transportation of alleged seized contraband. The alleged recovery of 180 ML of illicit liquor was made from the pant of the petitioner as per the FIR itself and as such, it has been



allegedly recovered from the person of the petitioner. The vehicle in question cannot be said to be used in carrying the illicit liquor. He further submits that in fact, no recovery of illicit liquor was made from the possession of the petitioner, and he has been falsely implicated in the present case by the police. In fact, the vehicle in question was seized from the house of the petitioner. It has been further submitted that the vehicle is no way liable for any seizure and confiscation. The petitioner is entitled to return of the vehicle with compensation for violation of his constitutional right and expenditure on forced litigation.

5. Ld. Counsel for the respondents who represent the State, however, defends the impugned orders submitting that the vehicle in question is liable to be confiscated under the Bihar Prohibition and Excise Act, 2016 under facts and circumstances of the case and hence, there is no illegality or impropriety in the impugned orders and the petitioner does not deserve any relief as prayed for.

6. In view of the aforesaid facts and circumstances and rival submissions of the parties, the legal questions which arise for consideration by this Court is whether the vehicle in question is liable to be seized and confiscated and whether the petitioner is liable to pay 50% of the insurance value of the vehicle to the State



as directed by Ld. Revisional Authority or the petitioner is entitled to return of the vehicle with compensation.

7. Before we consider the rival submissions of the parties, it would be imperative to examine the relevant statutory provisions and case laws.

8. Sections 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 of the case.

9. **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 by the petitioner on 26.09.2017. Section 56 as it 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 liquor;

(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)

10. 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 in all pending confiscation proceedings by virtue of its 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)

11. 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 subsection (2), give a reasonable opportunity to the person concerned, of being heard;

(4) While making an order of confiscation under subsection (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 subsection (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)

12. 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.”



13. 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.”

14. 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.”

15. 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 in all pending confiscation 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)

16. 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 / 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 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.

17. 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.

18. It is also relevant to refer to some case laws to explain the meaning of the word “use” . In **Wilson C.C. Vs. State of Kerala [2022 LiveLaw (Ker) 627]** , a person was driving a vehicle and 0.06 grams of LSD Stamp was recovered



from wallet kept in his pocket. **Hon'ble Kerala High Court** held that it could not be said that the vehicle was used for conveyance of the contraband and the vehicle is subject to confiscation. In **Thausif Ahammad Bengre Vs. State of Kerala [MANU/KE/0426/2018]** the vehicle was being driven by the driver and 40 grams *Ganja* was recovered from his possession. In that situation, **Hon'ble Kerala High Court** held that it is really fallacious to contend that the vehicle was used for carrying the contraband.

19. 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.

20. Coming to the case at hand, no intoxicant or liquor was recovered from the motorcycle of the petitioner. Only 180 ML liquor was recovered from *pant* of the petitioner. In such situation, the motorcycle cannot be held to have been used to carry the illicit liquor which was recovered from the person of the petitioner. The word 'use' cannot be given liberal or expansive meaning. It has to be interpreted strictly as it has penal consequences. But the confiscation authority confiscated the vehicle in question by the impugned order. Even the Appellate Authority did not correct the wrong and upheld the confiscation order. Even the Revisional Authority did not do full justice, directing release of the vehicle only after payment of 50% of the insurance value of the motorcycle. Hence, the petitioner was constrained to move this Court incurring further expense on litigation. This case is a classic illustration of how the people are being harassed by concerned State officials in the name of the Bihar Prohibition and Excise Act, 2016.

21. In view of the aforesaid facts and circumstances of the case, we find that all the impugned orders are arbitrary and hit by Article 14 of the Constitution. They are also violative of Constitutional right of the petitioner to hold property as provided



in Article 300A of the Constitution, which prohibits any deprivation of property without authority of law. The Bihar Prohibition and Excise Act no way authorises the official to seize or confiscate the vehicle in the alleged facts and circumstances of the case. Hence, the seizure and confiscation of the motorcycle in question is without any authority of law. The confiscation, appellate and revisional orders are, accordingly, liable to be quashed. The petitioner, whose constitutional right to property has been violated, is entitled to adequate compensation. He is also entitled to compensation on account of expenditure and harassment in course of forced litigations.

22. Hence, the impugned order dated 11.04.2022 passed by Additional Chief Secretary, Bihar, Patna, in Excise Revision No. 16 of 2022, order dated 14.12.2021 passed by Appellate Authority in Excise Appeal Case No. 822 of 2021 and order dated 14.8.2021 passed by Ld. Collector cum District Magistrate, Saharsa, in Excise Confiscation Case No. 102/2018-19 are quashed and District Collector, Saharsa is directed to release the motorcycle forthwith. He is also directed to pay Rs.1,00,000/- (Rupees one lac only) to the petitioner towards compensation. The payment of the compensation must be made within **ten (10) days** of the receipt of the order.



23. The petition is allowed, accordingly.

(Jitendra Kumar, J.)

I agree

(P. B. Bajanthri, J.)

Ravishankar/S.Ali

AFR/NAFR	AFR
CAV DATE	20.07.2023
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