

(2019) 07 PAT CK 0337

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 9648 Of 2019

Ajay Kumar Tiwari

APPELLANT

Vs

State Of Bihar Through The Secretary And Ors

RESPONDENT

Date of Decision : 23-07-2019

Acts Referred:

Bihar Prohibition And Excise Act, 2016 — Section 2(16), 30(d)
Bihar Excise (Mahua Flowers) Rules, 2006 — Rule 3

Citation : (2019) 07 PAT CK 0337

Hon'ble Judges : Jyoti Saran, J; Partha Sarthy, J

Bench : Division Bench

Advocate : Shivendra Prasad

Final Decision : Allowed

Judgement

Heard learned counsel for the petitioner and learned counsel appearing on behalf of the State.

The petitioner prays for provisional release of the Motorcycle bearing registration No. BR2K3530 which has been seized in connection with Bodhgaya P.S. Case No. 372 of 2017 for the offence punishable under section 30(d) of the Bihar Prohibition and Excise Act, 2016.

Counsel for the petitioner informs that it is for alleged recovery of 25 Kg of Mahua flower that has given rise to Bodhgaya P.S. Case No. 372 of 2017 for alleged violation of the provisions of section 30(d) of the Bihar Prohibition and Excise Act (for short 'the Act')

The issue as to whether a seizure of Mahua flower can be a subject matter of confiscation proceeding under the Act came up for consideration in a batch of cases arising out of C.W.J.C. No. 23163 of 2018 (Umesh Kumar vs. the State of Bihar & Ors.) and analogous cases and this Court after discussing the legal position, has held as follows :

"For the discussions above, we find the proceedings initiated against the petitioners for alleged recovery of Mahua flowers exceeding 5 Kg. which lies at the foundation for such penal action under 'the Act' and the 'Mahua Flowers Rules', absolutely without jurisdiction because we neither find such enabling powers in the respondents to initiate any action under 'the Bihar Mahua Flowers Rules' nor 'the Act' enables the respondents to initiate action on mere possession of Mahua Flowers, until, it is converted either into plain or spiced spirit as clearly defined under Section 2(16) of 'the Act'.

Since 'the Mahua Flowers Rules' allows any person to remain in possession of Mahua Flowers to the extent of 5 kg. without any licence and any quantity in excess thereof, is to be done under a licence, the quantity possessed by the respective petitioners in excess of 5 kg., without a licence, may be a statutory violation and thus capable of retention by the State Government but in absence of any penal action so provided under 'the Rules' or 'the Act' for possession of these flowers exceeding the limit, even if the State Government would be within its jurisdiction to retain the same, the confiscation proceedings cannot be allowed to continue.

In result, we hold that the confiscation proceedings, if any, initiated against the petitioners for alleged violation of Section 3 of 'the Mahua Flowers Rules' read alongside the provisions of 'the Act' for possession of Mahua Flowers exceeding 5 kgs., is without sanction of law and consequentially the confiscation proceeding, if any, initiated against the petitioners shall stand quashed and the vehicles seized, if not already released, shall be released in favour of the owner on production of ownership papers."

In view of the legal position so settled, we accordingly, quash the confiscation proceeding, if any, initiated against the petitioner arising from Bodhgaya P.S. Case No. 372 of 2017 for alleged possession of 25 Kg of Mahua flower and consequently direct the District Magistrate, Gaya to forthwith release the vehicle of the petitioner on production of ownership papers.

Writ petition is allowed.