

(2020) 02 PAT CK 0159

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 161 Of 2020

Ashish Kumar Choudhary

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 04-02-2020

Acts Referred:

Bihar Prohibition And Excise Act, 2016 — Section 30(a), 56(b), 58(1)

Citation : (2020) 02 PAT CK 0159

Hon'ble Judges : Dinesh Kumar Singh, J; Anil Kumar Sinha, J

Bench : Division Bench

Advocate : Brij Nandad Prasad, Vivek Prasad

Final Decision : Disposed Of

Judgement

Heard Mr. Brij Nandan Prasad, learned counsel for the petitioner and Sri Vivek Prasad, learned GP- 7.

Learned counsel for the petitioner is permitted to make correction with regard to the designation of the party respondents in the cause title portion of this writ petition.

The present writ application has been filed for quashing the order dated 14.11.2019 passed by learned Additional Sessions Judge 2nd, Bank in Rajoun (Nawada Bazar) P.S. Case No. 392 of 2019 whereby the prayer for release of the petitioner's auto rickshaw bearing registration no. BR-10PB/4532 in connection with Rajoun (Nawada Bazar) P.S. Case No. 392 of 2019 has been rejected. A further prayer has been made for directing the respondents to release the said vehicle in question in favour of the petitioner.

The relief, as prayed for, in paragraph -1 of the writ petition reads as follows:-

"That petitioner of this writ application seeks the following reliefs:-

i. For issuance of writ in the nature of certiorari to quash the order dated 14.11.2019 passed by the Court of Additional Sessions Judge, 2nd, Banka passed

in Rajoun (Nawada Bazar) P.S. Case No. 392 / 2019 for release of motor cycle seized under Section 30(a) of Bihar Prohibition and Excise Act, 2016 for Rajoun (Nawada Bazar) P.S. Case No. 392 / 2019 was lodged.

ii. For issuance of writ of mandamus commanding and directing the Respondents to release the seized Auto Rickshaw bearing registration No. BR-10PB/4532 of petitioner seized under Excise Act in Rajoun (Nawada Bazar) P.S. Case No. 392 /2019.

And / or pass such other order or orders as deem fit and proper in the interest of justice."

The prosecution case as per the written report of Shravan Kumar, Sub Inspector of Police, Nawada Bazar O.P. submitted before the learned Chief Judicial Magistrate, Banka is to the effect that on 19.09.2019 during the course of patrolling, the auto rickshaw in question was intercepted from which, 01 liter of Mahua liquor was recovered, leading to registration of Nawada Bazar P.S. Case No. 392 of 2019 on 20.09.2019.

It is submitted by learned counsel for the petitioner that petitioner is the owner of the vehicle in question and statement to that effect has been made in paragraph no. 4 of the writ petition. The certificate of registration of the vehicle in question has been brought on record, as Annexure -1 to the writ petition. He further submits that the vehicle in question is rotting in open sky and confiscation proceeding has not been initiated till date. It is further submitted that the petitioner has not been made an accused in the F.I.R. and he is ready to produce the vehicle in question after release of the same as and when directed by the concerned Court or by the confiscation authority and he will not change the shape of the vehicle in question or transfer the same to any third party.

It is submitted by Sri Vivek Prasad, learned GP - 7 that though the matter was heard and adjourned vide order dated 13.01.2020 for 27th January, 2020 to enable learned counsel for the State to seek instruction and file counter affidavit, but no instruction has been received though he has received a telephonic message that due to inadvertence, the proposal / report under section 58(1) of the Act was initially transmitted to the Court of learned A.D.J. II, Nawada and now the informant has transmitted the proposal to the Superintendent of Police, Nawada, who is supposed to transmit the same under Section 58(1) of the Act to the District Magistrate having jurisdiction. He further submits that since Mahua liquor has been recovered from the vehicle in question, hence it is liable for confiscation under section 56(b) of the Act and petitioner has made District Magistrate-cum-Collector, Bhagalpur as party respondent no. 2 and this also led to some confusion in getting instruction.

Considering the rival submissions of the parties, it is admitted position that proposal under Section 58(1) of the Act has still not be transmitted to the District Magistrate, Nawada. In these circumstances, allowing the vehicle to rot only for keeping it as a material exhibit for trial, which is not likely to commence in the

near future due to huge pendency of cases under the Act we direct for provisional release of the vehicle in question to the satisfaction of learned A.D.J. II- cum- Special Judge (Excise), Banka or in case of initiation of confiscation proceeding, to the satisfaction of learned District Magistrate-cum-Collector, Banka, on the following conditions:-

(I) The petitioner will produce the proof of valid certificate of registration/ ownership in his favour including the insurance papers;

(II) The petitioner will furnish surety bond of Rs. 75,000/- but not in the form of bank guarantee or cash, with two sureties of the like amount to the satisfaction of the A.D.J. II-cum-Special Judge, Excise, Banka or the confiscation authority i.e. District Magistrate - cum- Collector, Banka, as the case may be;

(III) The petitioner shall give an undertaking on affidavit that he will not deal with the vehicle in question or alienate or encumber the same creating any kind of adverse interest against the interest of the State during the pendency of the confiscation proceeding;

(IV) The petitioner will not use the vehicle for any illegal purpose and as and when required, he will produce the vehicle in question before the court or authority concerned.

(V) At the time of release of the vehicle in question, the concerned court or authority shall get prepared photo copy of the vehicle in question duly certified in presence of the petitioner;

(VI) Panchnama of the vehicle in question shall also be prepared and will be kept on record which may be used as secondary evidence and the petitioner will furnish an affidavit incorporating therein an undertaking not to challenge the said photo copy or panchnama so prepared in his presence at the time of release of the vehicle in question for use in course of the trial or confiscation proceeding as the case may be.

It is made clear the Court below will complete the exercise of release of the vehicle in question on fulfilling the aforementioned conditions within a period of ten days from the date of receipt / production of a copy of this order.

It is made clear that we have not expressed any opinion with regard to the merits of the case or with regard to the ownership of the vehicle in question.

Accordingly, the writ petition is disposed of.