

(2020) 03 PAT CK 0061

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 3408 Of 2020

Chandu Kumar @ Chand @ Md. Chand @ Me. Chand

APPELLANT

Vs

State Of Bihar Bihar And Ors

RESPONDENT

Date of Decision : 05-03-2020

Acts Referred:

Bihar Prohibition And Excise Act, 2016 — Section 30(a), 58(1), 60, 73(e)
Constitution Of India, 1950 — Article 226, 227

Citation : (2020) 03 PAT CK 0061

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

Bench : Division Bench

Advocate : Rina Sinha, Vivek Prasad, Manisha Singh

Final Decision : Disposed Of

Judgement

Heard learned counsels for the parties.

The present writ application has been filed for release of the PIAGGIO tempo bearing Registration no. BR 01PJ 5209, seized in connection with Digha P.S. Case No.473 of 2019, registered for the offences punishable under Section 30(a) of Bihar Prohibition and Excise Act, 2016, as amended by Amendment Act 8 of 2018 (hereinafter referred to as the Act).

The relief claimed by the petitioner in paragraph 1 of the writ petition reads as follows:

"That, the present writ application is being filed by the petitioner for issuance of an appropriate writ/writs directing the respondents to release PIAGGIO temp bearing registration no. BR-01PJ-5209, Chassis No. MBX0003BFWF661171, Engine No. RBF2974310 of the petitioner which was seized by Shambhu Sharan A.S.I. Digha P.S in Special Case No.7280/19 arising out of Digha P.S Case No.473/2019 U/S 30(a) of Bihar Excise Amendment Act 2016 which is pending before Lrd. Special Judge Excise, Patna. "

The factual matrix of the case is that as per the written report of ASI Shambhu Sharan of Patipul check post, Digha submitted to the SHO, Digha Police Station, on 14.8.2019 during vehicle check, the three-wheeler in question was seen coming from Sonapur side on which two persons, namely, Chandu Kumar (petitioner) and Shubham Kumar were sitting. On search, from the vehicle in question, 52.125 litres of Indian Made Foreign Liquor was recovered, leading to registration of Digha P.S. Case No.473 of 2019.

It is submitted by learned counsel for the petitioner that the petitioner is the bonafide owner of the vehicle in question and the certificate of registration of the the said vehicle has been brought on record as Annexure 2 to the writ application. It is further submitted that the vehicle in question is rotting in open area.

Though no notice has been received by the petitioner but the counter affidavit suggests that the confiscation case being Confiscation Case No. 2442 of 2019-20 has been initiated.

Learned counsel for the respondents, however, submits that since the confiscation proceeding has been initiated, the vehicle in question may not be released but the Collector, Patna will dispose of the confiscation proceeding within a time frame.

The valid seizure is the sine qua non for initiation of confiscation proceeding under Section 58 (1) of the Act but in the present case, seizure has been made by Assistant Sub Inspector of Police whereas Section 73(e) of the Act mandates that seizure can only be made by a police officer not below the rank of Sub Inspector.

Even if the vehicle is not liable for confiscation, the Special Judge under the Act in view of the bar under Section 60 of the Act, does not have the jurisdiction to direct for the release of the seized vehicle. However, this Court is of the view that such bar will not operate in exercise of jurisdiction under Article 226 of the Constitution of India, since such power is very much required to be exercised in the given prevailing alarmingly monstrous situation. Considering the view taken by the Apex Court in the case of State of Karnataka Vs. K. Krishnan, reported in (2000) 7 Supreme Court Cases 80 and in the case of State of West Bengal and Ors. Vs. Sujit Kumar Rana, reported in (2004) 4 Supreme Court Cases 129, a Full Bench of this Court in the case of Baleshwar Roy Vs. The State of Bihar and Ors , 2018(4) PLJR 970, held as follows:

"62. It may, however, be added that Article 226 of the Constitution of India provides power to the High Court to issue writs to any person or authority, including in appropriate cases, any Government, any order or writs (including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part-III and for any other purpose). Similarly Article 227 of the Constitution of India provides the power of superintendence over all Courts and Tribunals

throughout the territories in relation to which any High Court exercises its jurisdiction. The powers of the High Court under Articles 226 and 227 of the Constitution of India cannot be curtailed under any circumstance, as the power flows from the Constitution itself. No statutory bar can affect the power of the High Court under Articles 226 and 227 of the Constitution of India.

63. Despite such wide and untrammelled powers, without any circumscription by external restrictions, the Courts have evolved certain self-imposed limits while exercising these powers. The High Courts, normally, would not go beyond justified inhibitions under any Statute except where there is a complete jettisoning of rule of law or under exceptional circumstances which demand timely judicial interdict. This inhibition is basically ordained, keeping in mind that there is a national weal behind any valid piece of Legislation incorporating and inhering in itself the social objective behind any Legislation. Though, no limitations or fetters have been put on the powers of the High Court under Articles 226 and 227 of the Constitution of India, as the High Courts perform as sentinel on the qui-vive, but such power is not to be exercised casually and without coming to the conclusion that non-exercise of such power would lead to positive injustice. Times without number, it has been held by the High Courts that only under condition of a person establishing that substantial injustice has or is likely to ensue, such extraordinary powers can be exercised. It needs no adumbration by this date that the plenary powers of the High Court have only to be exercised in the interest of justice.

64. Thus, an order of release may be passed under Article 226/227 of the Constitution of India, even pending confiscation proceedings, but only when it is established before the Court that the procedure prescribed and the law in that regard has been completely flouted and that there is complete violation of the procedure prescribed for confiscation, viz., notice to the offender before confiscation, allowing him opportunity of giving written representation and affording hearing on the issue to him and that such injustice cannot be remedied without the exercise of the extraordinary power.

65. Needless to state that under Article 226 of the Constitution of India, the Court will not go into the disputed question of facts.

66. Thus, the powers directing for release of the vehicles or goods, during the pendency of the confiscation, can only be sparingly exercised under monstrous situations and circumstances when injustice occurs because of non-fulfillment of the conditions for confiscation."

Considering the fact that the confiscation proceeding has been initiated, it is expected from the Collector, Patna to conclude the confiscation proceeding being Confiscation Case No. 2442 of 2019-20 strictly in accordance with law if it has already not been concluded, particularly, taking into account the fact that seizure has not been made by an officer authorized under the Act, within a period of six weeks from the date of receipt/production of a copy of this order after giving due

opportunity of hearing to all affected persons.

This writ application is, accordingly, disposed of.