

(2020) 02 PAT CK 0144

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 24669 Of 2019

Deepak Kumar

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 03-02-2020

Acts Referred:

Indian Penal Code, 1860 — Section 272, 273
Bihar Prohibition And Excise Act, 2016 — Section 30(a)
Constitution Of India, 1950 — Article 226, 227

Citation : (2020) 02 PAT CK 0144

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

Bench : Division Bench

Advocate : Rajesh Ranjan, Vivek Prasad

Final Decision : Disposed Of

Judgement

Heard Mr. Rajesh Ranjan, learned counsel for the petitioner and Mr. Vivek Prasad, learned G.P. 7.

The present writ application has been filed for release of Hundai i-10 Car bearing registration no. BR-31AD-0805 seized in connection with Pachrukhi (Sarai O.P.) P.S. Case No. 237 of 2019 registered for the offences punishable under Sections 272 / 273 of the Indian Penal Code, 1860 and Section 30(a) of the Bihar Prohibition and Excise Act, 2016 as amended by the Amendment Act 8 of 2018 (hereinafter referred to as 'the Act').

The prosecution case got initiated on the basis of written report of Gopal Jee Pandey, Sub Inspector of Police submitted before the learned Additional Sub Judge II -cum -Special Judge, Excise, Siwan to the effect that on 10.09.2019, a secret information was received that liquor was being transmitted and consequently, the car in question was intercepted which was being driven by one Deepak Kumar and from the car in question, 112.320 liters of Indian Made Foreign Liquor was recovered, leading to registration of Pachrukhi (Sarai O.P.) P.S. Case No. 237 of 2019 on 10.09.2019.

It is submitted by learned counsel for the petitioner that petitioner is the registered owner of the vehicle in question and statement to that effect has been made in paragraph no. 9 of the writ petition. The certificate of registration of the vehicle in question has been brought on record, as Annexure -2 to the writ petition. Learned counsel for the petitioner further submits that the car in question is rotting under the open sky and keeping the vehicle in such condition and allowing it to reduce into a junk would ultimately result into waste of public money. Hence, a prayer has been made to release the car in question forthwith.

Sri Vivek Prasad, learned G.P. 7, relying upon the counter affidavit filed on behalf of respondent no. 2 i.e. the Commissioner, Excise, Government of Bihar, Patna submits that the confiscation proceeding has been initiated vide Confiscation Case No. 92 of 2019-20 and show cause notice has been issued on 08.01.2020 however, it has been transmitted through registered post on 17.01.2020 and the next date has been fixed in the confiscation case as 07.02.2020.

From perusal of the counter affidavit it appears that for the F.I.R. has registered and seizure was made on 10.09.2019 and the confiscation proceeding has been initiated much after that and for the first time, notice has been issued on 08.01.2020 when the matter was heard by this Court on 13.12. 2019. Hence, it appears that after getting adjournment from this Court the confiscation proceeding has actually been initiated. However, considering the fact that confiscation proceeding has been initiated and in view of the ratio laid down by the Full Bench of this Court in the case of Baleshwar Roy and Ors. Vs. The State of Bihar and Ors. reported in 2018 (4) PLJR 970 wherein it has been held that on initiation of confiscation proceeding, this Court cannot interfere and exercise jurisdiction under Article 226 of the Constitution of India except in monstrous conditions, paragraph nos. 62 to 66 of the said judgment reads 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."

In view of the above mentioned ratio laid down by the Full Bench we are not inclined to interfere at this stage. However, the petitioner is expected to appear in the aforementioned confiscation proceeding regularly. It is further expected from the respondent authority i.e. District Magistrate, Siwan to conclude the confiscation proceeding expeditiously if it has not been already concluded, after giving due opportunity of hearing to all the affected persons / parties in accordance with law procedures as prescribed under the Act, within a period of six weeks from the date of receipt / production of a copy of this order.

In case the confiscation proceeding is not concluded within the stipulated time frame, the petitioner will be at liberty to renew his prayer for release of the vehicle in question if there is no lach on his part.

The writ petition with above observation and direction is disposed of.