

(2020) 11 PAT CK 0003

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 6619 Of 2020

Ishak Miya @ Md. Ishak @ Md. Ishak Miya

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 02-11-2020

Acts Referred:

Indian Penal Code, 1860 — Section 34, 272, 273, 414

Bihar Prohibition And Excise Act, 2016 — Section 30(a), 56, 60

Code Of Criminal Procedure, 1973 — Section 451

Citation : (2020) 11 PAT CK 0003

Hon'ble Judges : Sanjay Karol, CJ;S. Kumar, J

Bench : Division Bench

Advocate : Gagan Deo Yadav, Vivek Prasad

Final Decision : Disposed Of

Judgement

Heard the parties.

Petitioner has prayed for following relief:-

"That the present civil writ petition is being filed for release for vehicle Apache Motorcycle Chasis No. MD634CE41K2K12470, Engine No. CE4KK2212335, belongs to the petitioner, which has been seized by Laukahi police station (arising out of Laukahi PS Case No. 05/2020 dated 08.01.2020 under sections 272, 273, 414/34 of the IPC and Section 30(a) of the Bihar Prohibition and Excise Act, 2018. Confiscation proceeding has not been initiated against the petitioner's vehicle pending in the court of learned ADJ-II cum Special Judge (Excise), Madhubani."

Informant is a police officer who has alleged in his written complaint that on 08.01.2020 he received information that one SCORPIO vehicle and one motorcycle has fallen from the bridge and lying in the water and on such information he alongwith other police personnel reached the place of accident and pulled out the SCORPIO vehicle and motorcycle, and from SCORPIO vehicle

illicit liquor was recovered and in presence of independent witnesses SCORPIO vehicle and 918 litre of illicit liquor recovered from the SCORPIO vehicle as well as motorcycle was seized giving rise to Laukahi PS Case No. 05/2020 dated 08.01.2020 registered for the offences punishable under sections 272, 273, 414/34 of the IPC and Section 30(a) of the Bihar Prohibition and Excise Act, 2018.

As there is no recovery of any illicit liquor from the motorcycle, same is not liable for confiscation under Section 56 of the Excise Act and bar of jurisdiction in confiscation under Section 60 of the Excise Act is not applicable and as such Special Court Excise where the Excise case is pending has jurisdiction to pass order of release of the motorcycle.

Petitioner claims to be the owner of the seized motorcycle and since there is no recovery of any illicit liquor from the motorcycle, the writ petition is disposed of with a liberty to petitioner to file an application under section 451 of Cr.P.C. for release of his motorcycle and if any such petition is filed the Special Court Excise shall dispose of said petition within 30 days from the date of filing of such petition.