

(2020) 02 PAT CK 0256

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 11399 Of 2019

Khalid

APPELLANT

Vs

Bihar State Of Bihar And Ors

RESPONDENT

Date of Decision : 18-02-2020

Acts Referred:

Bihar Prohibition And Excise Act, 2016 — Section 2, 30(a), 56, 56(a)
Constitution Of India, 1950 — Article 226

Citation : (2020) 02 PAT CK 0256

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

Bench : Division Bench

Advocate : Krishna Ranjan, Kumar Manish

Final Decision : Disposed Of

Judgement

Heard Mr. Krishna Ranjan, learned counsel for the petitioner and Mr. Prashant Kumar, learned A.C. to S.C.-5 appearing on behalf of the respondents.

The present writ application has been filed for release of Tanker Lorry bearing Registration No.UP53AT1780, in favour of the petitioner, which has been seized in connection with Chautham P.S. Case No.87 of 2019 registered for the offences punishable under 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 relief, as prayed for in paragraph No.1 of the writ application reads as follows :-

"1. That this is an application for issuance of an appropriate writ in the nature of mandamus commanding directing the respondent authorities to release the vehicle bearing Tanklori Registration No.UP53AT1780, Chasis No.426031GSZ217578, Engine No.70G62582337 and seized 20,000 litres spirit in favour of the petitioner which has been illegally seized and have been kept in abandoned condition in connection with Chautham P.S. Case No.87 of 2019 registered under Section 30(a) of Bihar Prohibition and Excise Act, 2018 and for

any other relief/reliefs for which the petitioner is found to be entitled in the facts and circumstances of the case."

Prosecution case got initiated on the basis of the self statement of Gunjan Kumar, SI of police to the effect that on 17.4.2019 at 7:30 A.M., the informant received a secret information that an abandoned tanker lorry is parked on the road side of the Jaiprabha Nagar, consequently the informant reached at the place and found an unattended tank lorry and from the said vehicle, 20,000 litres of spirit was recovered, consequently the vehicle was seized, and Chautham P.S. Case No.87 of 2019 was registered.

It is submitted by learned counsel for the petitioner that the vehicle in question was filled with 20,000 litres of Ethenol, which is not potable article and hence cannot be categorized as spirit. It is further submitted by learned counsel for the petitioner that the petitioner is the registered owner of the vehicle in question and certificate of registration of the same has been brought on record, as Annexure-2 of the writ application.

Mr. Prashant Kumar, learned A.C. to S.C.-5 submits that on categorical examination, seized article has been found to be Ethonol, which comes within the definition of intoxicant as mentioned under Clause 40(iv) of Section 2 of the Act.

Section 56 of the Act prescribes the conditions when anything is liable for confiscation. Section 56(a) reads that any intoxicant or liquor unlawfully imported, transported or manufactured or any material, utensil, implement apparatus for purpose of storing, manufacturing or labelling such intoxicant or liquor are liable to be confiscated.

Relying upon the counter affidavit, filed on behalf of the respondent No.2 and 3, learned counsel for the State submits that the confiscation proceeding being Confiscation Case No.331 of 2019-20 with regard to the vehicle in question has been initiated on 11.01.2020 and the same is pending before Respondent No.02, the Collector-cum-District Magistrate, Khagaria.

Having heard learned counsel for the parties, earlier the counter affidavit was filed on behalf of respondent No.3 and 5 but a factual error was committed as the said counter affidavit dealt with seizure of one motorcycle and hence this Court vide order dated 06.09.2019 directed for filing fresh counter affidavit and consequently fresh counter affidavit on behalf of respondent No.2 and 5 has been filed.

Considering the fact that once the confiscation proceeding has been initiated, the exercise of discretionary jurisdiction under Article 226 of the Constitution of India, having self imposed restriction, can be exercised in exceptional or a monstrous situation, such as when fundamental rights have been violated, the impugned order or the proceedings are wholly without jurisdiction, or where the principle of natural justice has been grossly violated or vires of the Act is under challenge. Considering the view taken by the Apex Court in the case of State of

Karnataka Vs. K. Krishnan (2000) 7 Supreme Court Cases 80 and in the case of State of West Bengal and Ors. Vs. Sujit Kumar Rana, (2004) 4 Supreme Court Cases 129 and considering the ratio laid down by the Full Bench of this Court in the case of Baleshwar Roy Vs. The State of Bihar and Ors , 2018(4) PLJR 970, we are not inclined to pass order for release of the vehicle for the present.

In view of the discussion made above, respondent No.2, District Magistrate-cum-Collector, Khagaria is expected to conclude the proceeding of Confiscation Case No.331 of 2019-20, within a period of two months of receipt or production of the order in accordance with law, keeping in view the case was registered on 17.04.2019.

The petitioner is also expected to appear regularly and participate in the confiscation proceeding.

Accordingly, with the above observation and direction, the present writ application is disposed of.

The office is directed to communicate this order through fax/email to the District Magistrate, Khagaria for its strict compliance.