

(2020) 02 PAT CK 0299

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 13229 Of 2019

Manish Raj

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 20-02-2020

Acts Referred:

Indian Penal Code, 1860 — Section 504, 506

Bihar Prohibition And Excise Act, 2016 — Section 30(a), 34, 56(b), 73(e)

Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section (1)(r)(s)(w)

Citation : (2020) 02 PAT CK 0299

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

Bench : Division Bench

Advocate : Siddharth Harsh, Vivek Prasad

Final Decision : Allowed

Judgement

Heard Mr. Siddharth Harsh, learned Counsel for the petitioner and Mr. Vivek Prasad, learned Government Pleader No. 7 for the respondents.

The present writ application has been filed for release of Maruti Alto 800 car, bearing Registration No. BR02AH-2972, which has been seized in connection with Dehri Town (Indrapuri) Police Station Case No. 322 of 2019, registered for the offences punishable under Sections 504 and 506 of the Indian Penal Code, Sections 30(a)/34 of the Bihar Prohibition and Excise Act, 2016, as amended by Amendment Act 8 of 2018 (hereinafter referred to as 'the Act') and Section 3 (1) (r) (s) (w) of the SC/ST Act.

The relief, as prayed for, stipulated in paragraph 1 of the writ application, reads as follow:-

"For issuance of an appropriate writ/order/direction commanding the Respondents to forthwith release the vehicle (Maruti Alto 800) of the petitioner bearing Registration No. BR-02-AH-2972 (Engine No. F8DN5752959) (Chasis No.

MA3EUA61S00993722), which has been seized by the Police in relation with Dehri Town (Indrapuri) Police Station Case No. 322 of 2019, instituted for the offences under Sections 504, 506 of the Indian Penal Code, Sections 30(a)/34 of the Bihar Prohibition and Excise Act, 2016 and Section 3 (1) (r) (s) (w) of the SC/ST Act."

The prosecution case, as per the written report of one Anil Ram, submitted to the Station House Officer, Indrapuri Police Station, to the effect that on 18.05.2019, at 9 AM, all F.I.R. named accused persons came and abused the informant and though subsequently the matter was reconciled. Subsequently, on 19.08.2019, all the accused persons came on an alto car while 2-3 persons came on motorcycles, abused the informant by taking his caste name and also assaulted him and when villagers gathered there, the accused persons fled away, leaving behind the car. Then, the informant noticed illegal liquor kept inside the car and he opened the same and seized 750 ml Indian Made Foreign Liquor and 5 sachets of 200 ml country made liquor, which was produced before the police and accordingly, the liquor along with the car in question was seized by the Station House Officer, Dehri Town Police Station, leading to the registration of Dehri Town (Indrapuri) Police Station Case No. 322 of 2019.

It is submitted by learned Counsel for the petitioner that the petitioner is the registered owner of the vehicle in question and the certificate of registration of the seized vehicle has been brought on record by way of Annexure-1 to the writ petition. The vehicle is rotting under the open sky. It is further submitted that confiscation proceedings has not been initiated till date and the petitioner is ready to produce the motorcycle in question as and when required by the Court concerned and is ready to undertake that he will not change the shape and nature of the motorcycle in question and will not transfer or alienate the motorcycle in question. He further submits that he is not named in the First Information Report and the car has maliciously been handed over to the Police in the background of personal grudge of the informant with the petitioner. It also appears that the seizure witnesses are the persons known to the informant.

Learned Counsel for the respondents submits that since the liquor was recovered from the vehicle in question, hence the same is liable to be confiscated under Section 56 (b) of the Act, though the same has been produced by the informant to the police. He further submits that proposal for confiscation of the vehicle in question has already been transmitted by the Superintendent of Police, Rohtas, vide letter no. 1794, dated 20.08.2019, but there is no instruction that any confiscation proceedings has actually been initiated in pursuance of the proposal sent by Superintendent of Police to the District Magistrate, Rohtas.

Having heard learned Counsel for the parties and on perusal of the record, it appears that the vehicle in question along with the liquor has been produced before the Police by one Anil Ram, a private person, which is evident from the written report itself. Section 73(e) of the Act mandates the seizure by an officer not below the rank of Sub-Inspector of Police. Hence the seizure is contrary to

the provisions of the Act.

Keeping in view the fact that the First Information Report was registered on 20.05.2019, but till date admittedly no confiscation proceeding has been initiated, we are constrained to consider the provisional release of the vehicle in question.

In the circumstances in our view allowing the vehicle to turn into junk will be contrary to the ratio laid down by the Supreme Court, in the cases of *Sunderbhai Ambalal Desai Vs. State of Gujrat and other*, reported in (2002) 10 SCC 283 and *General Insurance Council and Ors. Vs. State of Andhara Pradesh and Ors.*, reported in (2010) 6 SCC 768.

However, in view of the admitted position that neither the petitioner was present at the place of seizure nor confiscation proceeding has been initiated till date moreover, more than two lakh cases have been registered in the State of Bihar, hence there is no likelihood of the trial being concluded in near future, we are constrained to direct that the vehicle in question be released provisionally till the conclusion of the trial, if any, to the satisfaction of learned Additional Sessions Judge-II -cum- Special Judge, Excise, Rohtas, at Sasaram and if confiscation proceeding is initiated, in the mean time, to the satisfaction of the District Magistrate -cum- Collector, Rohtas, 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.50,000/- but not in the form of bank guarantee or cash, with two sureties of the like amount to the satisfaction of the learned Additional Sessions Judge-II -cum- Special Judge, Excise, Rohtas, at Sasaram or the District Magistrate -cum- Collector, Rohtas, 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.

The entire exercise of release will be done by the learned Additional Sessions Judge-II -cum- Special Judge, Excise, Rohtas, at Sasaram or the District Magistrate -cum- Collector, Rohtas, as the case may be, within ten days 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 accusation or with regard to the ownership of the vehicle in question.

Accordingly, the writ application is allowed to the extent as indicated above.