

(2020) 01 PAT CK 0323

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 24817 Of 2019

Md. Faiyaz Alam

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 21-01-2020

Acts Referred:

Bihar Prohibition And Excise Act, 2016 — Section 30(a), 37(b)(c)
Constitution Of India, 1950 — Article 226, 227

Citation : (2020) 01 PAT CK 0323

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

Bench : Division Bench

Advocate : Sanjiv Sharan, Madan Mohan

Final Decision : Disposed Of

Judgement

Heard Mr. Sanjeev Sharan, learned counsel for the petitioner and Mr. Madan Mohan, learned A.C. to SC 5 for the respondents.

The present writ application has been filed for release of Maruti Swift Dzire car, bearing Registration No. BR33M-8303, seized in connection with Special Case No. 6018 of 2019, arising out of Gandhi Maidan P.S. Case No. 295 of 2019, registered for the offences punishable under Sections 30(a)/ and 37 (b) (c) of the Bihar Prohibition and Excise Act, 2016, as amended by Amendment Act 8 of 2018 (hereinafter referred to as 'the Act').

The prosecution case got initiated with the written report of Birendra Kumar, Sub Inspector of Police, Gandhi Maidan P.S., submitted to the S.H.O., Gandhi Maidan Police Station, to the effect that on 07.07.2019, at 00:05 AM, during patrolling duty, the vehicle in question was intercepted and 0.750 litres of Indian Made Foreign Liquor along with 6 litres of beer were recovered, leading to the registration of Gandhi Maidan Police Station Case No. 295 of 2019.

A counter affidavit, dated 18.01.2020 has been filed on behalf of respondent No.2, the District Magistrate, Patna, stipulating at paragraph no. 8 therein that

with respect to the vehicle in question, confiscation proceeding being Confiscation Case No. 1431/2019-20 has already been initiated, which reads as under:-

"8. That accordingly the District Magistrate, Patna has initiated Confiscation Case No. 1431/2019-20 and issued notice vide letter no. 116, dated 17-01-2020 to the petitioner to submit show cause in the aforesaid matter."

It is submitted by learned counsel for the petitioner that the petitioner is the registered owner of the vehicle in question. A registration certificate of the seized vehicle has been brought on record, as Annexure-2.

It is submitted by learned AC to SC-5 that proceeding of the said confiscation case will be concluded within a time frame.

Considering the fact that once the confiscation proceeding is initiated, the exercise of discretionary jurisdiction under Article 226 of the Constitution of India, having self imposed restrictions can be exercised in exceptional or in a monstrous situation. Considering the view taken by the Apex Court in the case of State of Karnataka Vs. K. Krishnan, reported in (2000) 7 SCC 80 and in the case of State of West Bengal and Ors. Vs. Sujit Kumar Rana, reported in (2004) 4 SCC 129, a Full Bench of this Court in the case of Baleshwar Roy Vs. The State of Bihar and Ors., reported in 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."

Since the vehicle in question was seized on 07.07.2019, it is expected that the Respondent No. 2, the District Magistrate- cum-Collector, Patna shall conclude the proceeding of Confiscation Case No. 1431/2019-20 within a period of six weeks from the date of receipt/production of a copy of this order, in accordance with law.

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.

Let a copy of this order be communicated to the Collector, Patna, through fax, immediately.