

(2020) 02 PAT CK 0048

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 371 Of 2020

Pappu Yadav

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 04-02-2020

Acts Referred:

Bihar Prohibition And Excise Act, 2016 — Section 30(a), 56(b), 58(i), 73(e)
Constitution Of India, 1950 — Article 226, 227

Citation : (2020) 02 PAT CK 0048

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

Bench : Division Bench

Advocate : Mukul Kumari, Roona

Final Decision : Disposed Of

Judgement

Dinesh Kumar Singh, J

Heard Ms. Mukul Kumari, learned Counsel for the petitioner and Ms. Roona, learned Assistant Counsel to Government Pleader No. 7 for the respondents.

The present writ application has been filed for release of Hero Splendor Plus motorcycle, bearing Registration No. BR26L-5828, which has been

seized in connection with Pauthu Police Station Case No. 20 of 2019, registered for the offence punishable under Section 30 (a) of the Bihar

Prohibition and Excise Act, 2016, as amended by Amendment Act 8 of 2018 (hereinafter referred to as "the Act").

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

"That the present writ application is being filed for issuance of writ in nature of certiorari or any appropriate writ, order or direction to direct the

respondent authorities to released the seized Splender Plus motorcycle bearing Registration No. BR26L-5828, Chasis No. MBLHA10CGGHM57622,

Engine No. HA10ERGHM28440 in favour of the petitioner which has been seized in connection with Pauthu P.S. Case No. 20 of 2019, registered

under Section 30(a) of the Bihar Prohibition and Excise Act, pending for trial in the Court of Special Judge (Excise), Aurangabad.â??

The prosecution case got initiated on the basis of the written report of Santosh Kumar Singh, Assistant Sub Inspector of Police, Pauthu Police Station,

submitted to the Station House Officer, Pauthu Police Station, to the effect that on 22.04.2019, at 11:50 PM, during patrolling duty, an information was

received that one person is carrying liquor on a motorcycle. Subsequently, the motorcycle in question was intercepted and from the motorcycle, 16

litres of country made liquor was recovered, leading to the registration of Pauthu Police Station Case No. 20 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, as Annexure-2 to the writ petition. The vehicle is rotting under the open sky. It is further

submitted that confiscation proceeding with regard to the vehicle has not been initiated, statement to this effect has been made in paragraph 11 of the

writ application. The petitioner is ready to produce the motorcycle in question as and when required by the Court concerned and undertakes not to

change the shape and nature of the motorcycle in question and also not to transfer or alienate the motorcycle in question.

The present First Information Report was instituted on 22.04.2019, the present writ application was registered on 08.01.2020 and by order dated

13.01.2020, on the request of the learned Counsel for the respondents to seek instruction and file counter affidavit, the matter was adjourned for

27.01.2020, and the notice was issued to the petitioner in the confiscation proceedings on 23.01.2020, i.e. when this Court adjourned the matter for

filing counter affidavit.

Ms. Roona, learned AC to GP-7, relying on the counter affidavit, dated 27.01.2020, filed on behalf of respondent no. 3, the Collector-cum-District

Magistrate, Aurangabad, submits that in pursuance to the report under Section 58(i) of the Act, transmitted to Superintendent of Police, Aurangabad

vide letter no. 1302, dated 14.08.2019, the confiscation proceeding was initiated, vide Excise Confiscation Case No. 716 of 2019. The liquor was recovered from the vehicle in question and accordingly, the same is liable to be confiscated under Section 56(b) of the Act.

Having heard learned Counsel for the parties and on perusal of the record, it appears that seizure has been made by Assistant Sub-Inspector of Police, which is evident from the very opening line of the written report, whereas Section 73(e) of the Act mandates the seizure to be done by an officer not below the rank of Sub-Inspector of Police. Hence the seizure is contrary to the provisions of the Act. Section 58(i) of the Act mandates the report to be transmitted to the Collector of the area by the detaining and seizing authority; whereas in the present case, the Superintendent of Police, Aurangabad has transmitted the said report to the Collector, Aurangabad.

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 restrictions can be exercised only 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 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.â??

Since the vehicle in question was seized on 22.04.2019, it is expected that the Respondent No. 3, the District Magistrate- cum-Collector, Aurangabad,

shall conclude the proceeding of Excise Confiscation Case No. 716 of 2019 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, Aurangabad, through fax/email, immediately.