
(2019) 12 PAT CK 0109

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 13727 Of 2019

Rajesh Kumar

APPELLANT

Vs

State Of Bihar Through The Principal Secretary And Ors

RESPONDENT

Date of Decision : 03-12-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Bihar Prohibition And Excise Act, 2016 — Section 30(a), 61, 92(2)

Citation : (2019) 12 PAT CK 0109

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

Bench : Division Bench

Advocate : Mritunjay Kumar Singh, Vivek Prasad

Final Decision : Disposed Of

Judgement

At the very outset, learned counsel for the petitioner seeks permission to make necessary correction in the main portion of I.A. No.1 of 2019. Permission is granted.

Heard Mr. Mritunjay Kumar Singh, learned counsel for the petitioner and Mr. B.R.P. Sinha, learned A.C. to G.P.-7 for the State.

This writ application has been preferred with a prayer for direction to respondents to release Mahindra Bolero Pickup bearing Reg. No. UP-75AT-1081, which has been seized in connection with Ranitalab P.S. Case No.27 of 2018, registered under Section 30(a) of Bihar Prohibition and Excise Act, 2016.

The relief claimed by the petitioner in paragraph No.1 of the writ application reads as follows :-

"For issuance of appropriate writ in nature of Mandamus commanding the Respondent authorities to release a Mahindra Bolero Pickup bearing Reg. No.UP-75AT 1081, Chasis No.MA1ZN2GHKG1D38616 and Engine No.GHG1D26826 in favour of petitioner which has been seized by respondents

authorities in connection with Ranitalab P.S. Case No.27 of 2018, District-Patna."

Subsequently, the petitioner filed I.A. No.1 of 2019 with a prayer for amendment of the prayer to the effect to quash the order of confiscation dated 21.08.2019 passed in Confiscation Case No.1394 of 2018-19 by learned District Magistrate, Patna and for a direction to respondent authorities to quash the auction proceeding.

The relief claimed in I.A. application in paragraph No.1 is as follows :-

(I) For quash the order of Confiscation Case No.1394 of 2018-19 which is passed by District Magistrate, Patna on 21.08.2019, hence it is came to knowledge to the petitioner through counter affidavit of the respondent authorities.

(II) For issuing direction to the respondent to quash the auction (Nilami) proceeding of aforesaid vehicle which was done on 04.10.2019 by the SDO, Paliganj.

The factual matrix of the case is that as per the First Information Report registered on basis of written report of Jai Prakash Singh, Sub Inspection of Police, submitted to S.H.O. Ranitalab P.S., is to the effect that on 02.02.2018 at 10.00 P.M. during the course of checking of vehicles, on secret information, one Mahindra Bolero Pickup, bearing Reg. No.UP-75AT 1081, was intercepted and on search 93 boxes each containing 12 bottles of 750 ml each Royal Stag Classic Whisky were recovered from the said Bolero Pick-up, leading to registration of Ranitalab P.S. Case No.27 of 2018 under Section 30(a) of Bihar Excise and Prohibition Act, 2016 against the driver and others.

It is submitted by learned counsel for the petitioner that the FIR was registered on 02.02.2018, whereas the seizure list was prepared on 01.02.2018. The petitioner then preferred the present application for release of the vehicle in question which got registered on 06.07.2019. The writ application was taken up on 26.09.2019 when on the prayer of the counsel for respondent State the matter was adjourned for eight weeks to enable the counsel for respondent to file counter affidavit and thereafter the final order in confiscation proceeding was passed on 21.08.2019 and consequently, auction sale was made, which shows the malicious manner in which the petitioner's bona fide right has been jeopardised.

Learned counsel for the State submits that now the final order of confiscation has been made, hence the application has now become infructuous.

Having considered the rival submissions made by the parties, we are of the view that at present the application has become infructuous, in view of the final order having been passed in confiscation proceeding. Petitioner is now no longer the owner of the vehicle as in view of the provision under Section 61 of the Bihar Prohibition and Excise Act, the property has already been vested in the State of Bihar. Since there is a provision of Appeal under Section 92(2) under Chapter IX of the Act before the Excise Commissioner against the order of the Collector, the

petitioner is at liberty to exercise the alternative remedy of appeal.

It is well settled law that exercise of jurisdiction under Article 226 of the Constitution of India is discretionary in nature and it has to be exercised under self imposed restriction and has to be sparingly exercised where alternative and efficacious remedy is available.

We dispose of the present writ application with a liberty to the petitioner to file Appeal, along with petition for condoning the delay in filing the Appeal, within 90 days from today before the Excise Commissioner. If any such Appeal is filed on behalf of the appellant then the learned Appellate Authority (Excise Commissioner) may consider to condone the delay, in view of the fact that the writ application was pending before this Court and dispose of the appeal within a further period of four months after giving opportunities to both sides in accordance with law.

It is made clear that we are not expressing any opinion on the merit of the case. The petitioner will be at liberty to raise his all contentions before the appellate authority.