
(2020) 02 PAT CK 0382

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 14057 Of 2019

Rajesh Kumar Prasad @ Rajesh Prasad @ Guddu Saw

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 27-02-2020

Acts Referred:

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

Citation : (2020) 02 PAT CK 0382

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

Bench : Division Bench

Advocate : Mukul Kumari, Prashant Kumar

Final Decision : Disposed Of

Judgement

Heard Mrs. Mukul Kumari, learned counsel for the petitioner and Mr. Prashant Kumar, learned AC to SC - 5.

The present writ application has been filed for release of Chevrelet Car bearing Registration no. BR1AG9820, which has been seized in connection with Bihata Excise Case No. 423 of 2019, registered for the offence punishable under Section 30(a) of the Bihar Prohibition and Excise Act, 2016 as amended by the Amendment Act 8 of 2019 (hereinafter referred to as "the Act").

The prayer stipulated in paragraph no. 1 of the writ petition reads as follows:-

"That the present writ application is being filed for issuance of writ in the nature of certiorari or any appropriate writ, order or direction to direct the respondent authorities to release the seized four wheeler car bearing registration no. BR1AG9820 in favour of the petitioner which has been seized in connection with Bihata Excise Case no. 423 of 2019, registered under section 30(a) of the Bihar Prohibition and Excise Act, pending for trial in the Court of Special Judge Excise, Patna"

The prosecution case as per the written report of Sub Inspector of Police Manoj Kumar submitted to the Station House Officer is to the effect that on 01.05.2019 at 10.40 A.M. a secret information was received that the petitioner- Rajesh Kumar Prasad @ Rajesh Prasad @ Guddu Saw is carrying liquor in the car in question. Consequently, a raid was led and the car was intercepted, wherefrom 88.890 liters of Indian Made Foreign Liquor was recovered.

Learned counsel appearing for the petitioner at the very outset submits that petitioner is the owner of the vehicle in question. The certificate of registration of the vehicle in question has been brought on record as Annexure -2 to the petition. The vehicle is rotting under the open sky and keeping the vehicle in such condition and allowing it to reduce into a junk would ultimately result into waste of public money and petitioner is ready to produce the vehicle in question as and when required by the court below. It is further submitted that the petitioner 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.

Learned counsel for the respondent relying upon the counter affidavit dated 17.01.2020 filed on behalf of the respondent no. 3 -Collector cum District Magistrate, Patna submits that on the basis of the report of the Senior Superintendent of Police, Patna vide letter no. 63 dated 06.01.2020 Confiscation Case No. 2678 of 2019-20 has been initiated and the notice has been issued to the petitioner vide notice dated 15.01.2020 and the next date fixed in the confiscation case is 11.02.2020.

Considering the fact that confiscation proceeding has already been initiated and in view of the ratio laid down by the Full Bench of this Court in the case of Baleshwar Roy and Ors. Vs. The State of Bihar and Ors. reported in 2018(4) PLJR 970 wherein it has been held that on initiation of confiscation proceeding this Court should not interfere in exercise jurisdiction under Article 226 of the Constitution of India, save and except in monstrous situations and circumstances when injustice occurs because of non fulfillment of the conditions for confiscation. Paragraph nos. 62 to 66 of the said judgment read 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."

In view of the above mentioned position, we are not inclined to interfere at this stage. Since the recovery of liquor from the vehicle in question has not been disputed, hence it is liable for confiscation under Section 56(b) of the Act. However, it is expected from the learned Collector cum District Magistrate, Patna to conclude the proceedings of Confiscation Case No. 2678 of 2019-20 within a period of six weeks. It is also expected from the petitioner to appear in the confiscation proceedings regularly.

The writ petition is accordingly disposed of.