

(2020) 01 PAT CK 0346

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 18026 Of 2019

Rambhu Dhagad @ Rambhu Dhangar

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 23-01-2020

Acts Referred:

Bihar Prohibition And Excise Act, 2016 — Section 30(a), 56, 58(1)

Citation : (2020) 01 PAT CK 0346

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

Bench : Division Bench

Advocate : Sanjay Kumar, Vikash Kumar, Revti Raman

Final Decision : Allowed

Judgement

Heard learned counsels for the parties.

The present writ application has been filed for release of Hero Super Splendor motorcycle of the petitioner bearing Registration No. BR22AM 0822, which has been seized in connection with Bairia P.S. Case No. 223 of 2019, registered for the offence 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 prayer as is contained in paragraph no.1 of the writ application, reads as follows:-

"(i) For issuance of writ in the nature of Mandamus of directing /commanding the respondent authorities to release the Hero Super Splendor Motorcycle bearing Chassis No. MBLJAW096K9F62313, Engine No.JA05EGK9F00540 in favour of petitioner.

(ii) For any other relief/reliefs for which petitioner is found entitled in the facts and circumstances of this case."

The prosecution case, as per the self statement of S.I. Sunil Kumar Singh of Bairiya Police station is to the effect that on 4.7.2019 at 6.15 P.M., a secret information was received that on a Super Splendor motorcycle without

registration number plate, two persons are carrying liquor. Consequently, the motorcycle was intercepted, Bhutta Mahto and Nand Kishore Mahto were apprehended and from the bag hanging on the handle of the motorcycle in question, total 5.5. litres of country made liquor were recovered, leading to registration of Bairiya P.S. Case No. 223 of 2019.

It is submitted by learned counsel for the petitioner that the petitioner is the registered owner of the vehicle in question and certificate of registration has been brought on record as Annexure-3 to the supplementary affidavit dated 20.1.2020 which suggests that the vehicle was registered on 12.7.2019, however, there is no explanation as to why the motorcycle in question, at the time of seizure, was not having its registration number. It is further submitted that the vehicle in question is rotting under the open sky and till date, confiscation proceeding has not been initiated.

Mr. Revati Raman, learned AC to SC 11 made submission on the basis of counter affidavit filed on behalf of respondent nos. 3 and 4, the S.P., Bettiah, West Champaran and the Officer-in-charge, Bairiya Police Station, respectively, though it is not mentioned in the counter affidavit as to on whose behalf it has been filed. The counter affidavit has been duly sworn by Arun Kumar Singh, Deputy Superintendent of Police (Headquarter), Bettiah. Paragraph 11 of the counter affidavit suggests that on the recommendation of the SHO, Bairiya Police Station dated 13.11.2019, the Superintendent of Police, West Champaran requested the District Magistrate vide letter no. 1114/Excise dated 21.11.2019 for initiation of confiscation proceeding which has been brought on record as Annexure C to the counter affidavit though in the counter affidavit, it has not been mentioned that confiscation proceeding has been initiated but learned counsel for the State submits that he has received instruction today in the morning that till date confiscation proceeding has not been initiated. Paragraph 11 of the counter affidavit reads as follows:

"That on the basis of DR No. 2548 dated 13.11.2019 sent from SHO the Superintendent of Police West Champaran has also made request to the District Magistrate West Champaran Bettiah vide letter No. 1114/Excise dated 21.11.19 for initiating confiscation proceeding of the vehicle in question."

Having heard learned counsels for the parties and considering their rival submissions, it appears from the record that the case was registered and seizure was made on 4.7.2019. Section 58(1) of the Act mandates the report to be submitted by the seizing or detaining authority. In the present case, the seizing authority is Sushil Kumar Singh, S.I. of Police of Bairiya Police Station but the statement in paragraph 11 of the counter affidavit suggests that the recommendation was made by the SHO of Bairiya Police Station and ultimate recommendation was made by the Superintendent of Police, West Champaran, hence, it is not as per the provisions of Section 58(1) of the Act which reads as follows:

"58. Confiscation by District Collector.-(1) Notwithstanding anything contained in this Act or any other law for the time being in force, where anything liable for confiscation under this Act is seized or detained under the provisions of this Act, the officer seizing and detaining such property shall, without any reasonable delay submit a report to the District Collector who has jurisdiction over the said area;...."

Section 58 of the Act suggests three pre-conditions for submitting a report to the Collector - one, that the report shall be submitted only with regard to the thing which is liable for confiscation under Section 56 of the Act; secondly, the report has to be made by the seizing or detaining authority and thirdly, it has to be submitted without unreasonable delay. In the present case, the report has not been submitted by the seizing and detaining authority and further that recommendation has been made after four months. Moreover, it is admitted fact that the confiscation proceeding has not yet been initiated.

In the circumstances, in our view, no useful purpose will be served in allowing the vehicle to reduce to junk, only for the purpose of being produced as material evidence during trial, particularly in view of the fact that the trial, if any, is not likely to be concluded in near future, considering the pendency of two lakh cases having been registered in the State of Bihar under the provisions of the Excise Act. Keeping the vehicle in such condition and allowing to reduce it into junk, would ultimately result into waste of public money has been deprecated by the Supreme Court in the case of *Sunderbhai Ambalal Desai Vs. State of Gujrat* and other analogous cases (2002) 10 SCC 283 and in the case of *General Insurance Council and Ors. Vs. State of Andhara Pradesh and Ors.* (2010) 6 Supreme Court Cases 768. We, accordingly, direct that the same be released till the conclusion of the trial or if the confiscation proceeding is initiated in the meantime, on the following conditions to the satisfaction of learned Additional District and Sessions Judge-cum-Special Judge (Excise) or Collector, West Champaran at Bettiah:

- (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 A.D.J.-cum- Special Judge, Excise, West Champaran at Bettiah or the confiscation authority, 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, if any or trial;
- (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 release exercise is expected to be concluded by the concerned authority 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.