

(2020) 07 PAT CK 0168

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 24450 Of 2019

Ranjeet Sah @ Ranjeet Kumar Sah

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 08-07-2020

Acts Referred:

Bihar Prohibition And Excise Act, 2016 — Section 30(a), 32(II), 41(i), 58, 60, 61
Code Of Criminal Procedure, 1973 — Section 451

Citation : (2020) 07 PAT CK 0168

Hon'ble Judges : Sanjay Karol, CJ;S. Kumar, J

Bench : Division Bench

Advocate : Rajeev Ranjan Sinha, Vivek Prasad

Final Decision : Disposed Of

Judgement

Heard learned counsel for the petitioner and learned counsel for the State.

Petitioner has prayed for following relief:-

(i) "For issuance of an appropriate writ/writs, order/orders/direction/directions including a writ preferably in the nature of mandamus for the direction to release Red and Black colour Passion Pro Motorcycle bearing registration No.BR33G-1816, Engine No.MOLH410EW46GC15673, Chassis No.HALOEDAGC-178689 in favour of the petitioner which was seized in connection with Patepur Police Station Case No.15 of 2019 dated 21.01.2019 for the offences punishable under Sections 30(A), 32(II), 41(i) of the Bihar Prohibition and excise Act, 2016 for Red colour Tractor with Dala thereafter, the petitioner was made an accused in this aforesaid case which is pending in the court of Special Judge Excise, Vaishali at Hajipur.

(ii) For grant of such other relief(s) for which the petitioner is found to be entitled in the facts and circumstances of the case.

Allegation is recovery of 756.36 liters of illicit liquor near Chura Mill where

vehicles were also parked, however, miscreants assembled there managed to escape on seeing the police and thereafter illicit liquors kept in cartoon and vehicles parked there were seized giving rise to Patepur P.S. Case No.15 of 2019 dated 21.1.2019 instituted under Section 30(A), 32(II) and 41(I) of Bihar Prohibition and Excise Act, 2016.

Petitioner claims to be owner of the vehicle and since there is no recovery of any illicit liquor from the vehicle, as such, vehicle is not liable for confiscation and bar of jurisdiction in confiscation under Section 60 of the Excise Act is not applicable, as such concerned Special Court (Excise) can exercise jurisdiction under Section 451 of Cr.P.C for release of the vehicle during pendency of criminal trial. It is submitted on behalf of petitioner that no confiscation proceeding has been initiated against the seized vehicle.

Counter affidavit has been filed in which it has been stated that illicit foreign liquor were seized and although petitioner was not apprehended on the spot but his motorcycle was seized from the place of occurrence and as such he was also made accused in the excise case. It is further stated that vehicle was actively indulged in trade of liquor and as such same is required to be dealt with procedure prescribed under Sections 58, 60 and 61 of the aforesaid Act.

In view of law laid down by Division Bench of this Court in case of Diwakar Kumar Singh vs. State of Bihar since reported in 2018 (3) PLJR 403 and following said judgment as well as other judgments passed by this Court, the Excise Commissioner, Bihar Patna in appeal arising out of Confiscation Case No. 107 of 2019 Ajit Roy Vs. Collector, Sheohar has held that transportation of prohibited article under the Act is a sine qua non for a vehicle to be confiscated.

The relevant paragraph of order passed in Appeal by Excise Commissioner is quoted below:-

"From the aforesaid judgment and order passed by the Hon'ble High Court of Patna it is well established that the transportation of prohibited article under the Act, 2016, is a sine qua non for a vehicle to be confiscated on the passing of an order by the District Collector. Therefore the confiscation order passed by the learned Collector, Sheohar in confiscation Case No. 107/2019 on 09.12.2019 is hereby ordered to be modified to the extent that the three motorcycles bearing registration No. BR-06BJ 6591; BR-06BL 5384 and BR-55 4036 will be released after verifying the document related to registration and owner of the said vehicle."

The writ petition is disposed of with liberty to petitioner to file a petition under Section 451 of Cr.P.C for release of vehicle before the concerned Special Court (Excise), where the trial of case arising out of Patepur P.S. Case No.15 of 2019 is pending and the Special Court (Excise) is directed to dispose of such petition within 30 days from the date of filing.