

(2020) 02 PAT CK 0353

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 13715 Of 2019

Raushan Thakur @ Roshan Thakur

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 26-02-2020

Acts Referred:

Indian Penal Code, 1860 — Section 272, 273

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

Citation : (2020) 02 PAT CK 0353

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

Bench : Division Bench

Advocate : Ritesh Kumar Narain Singh, Manisha Singh

Final Decision : Disposed Of

Judgement

Heard Mr. Ritesh Kumar Narain Singh, learned counsel for the petitioner and Mrs. Manisha Singh, learned AC to GP 7.

The present writ application has been filed for release of HML SPL I SMART motorcycle bearing Registration no. BR-30M-3858, which has been seized in connection with Suppi P.S. Case No. 63 of 2019 registered for the offences punishable under Sections 272, 273 of the Indian Penal Code, 1860 and Section 30(a) of the Bihar Prohibition and Excise Act, 2016 as amended by the Amendment Act 8 of 2018 (hereinafter referred to as "the Act").

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

"That the present writ application is being filed for issuance of an appropriate writ / writs, order / orders, direction / directions for the following reliefs:-

(i) For issuance of an appropriate writ commanding the respondents to release the vehicle Motorcycle of the petitioner having Registration No. BR-30M-3858 bearing Chassis No. MBLHAIZACGMBI 7420 Engine No. HAIZEMGHBI7697 lying in campus of Suppi Police Station in the district of Sitamarhi.

(ii) Any other relief or reliefs for which the petitioner is entitled under law as on facts."

The prosecution case as per the written report of Assistant Sub Inspector of Police Immajuddin submitted to the Station House Officer of Suppi Police Station is to the effect that on 14.03.2019 during patrolling, information was received that two persons were carrying liquor on a motorcycle and consequently, the motorcycle in question was intercepted and from the motorcycle in question, 72 liters of Nepali Saufi liquor was recovered and the two persons who were travelling on the motorcycle disclosed their name as Raushan Thakur (petitioner) and Chandan Kumar, leading to registration of Suppi P.S. Case No. 63 of 2019.

It is submitted by learned counsel for the petitioner 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. It is further submitted by learned counsel for the petitioner that the vehicle in question is rotting under the open sky and allowing it to reduce into a junk would ultimately result into wastage of public money, which has been deprecated by the Hon'ble Supreme Court in the case of *Sunderbhai Ambalal Desai Vs. State of Gujrat* and other analogous cases reported in (2002) 10 SCC 283 and in the case of *General Insurance Council and Ors. Vs. State of Andhara Pradesh and Ors.* reported in (2010) 6 Supreme Court Cases 768. He further submits that till date the confiscation proceeding has not been initiated and as such the vehicle in question may be released. He further submits that the petitioner will produce the vehicle in question after release of the same, as and when directed by the concerned court or the confiscation authority and he will not change the shape of the vehicle or transfer the same during the conclusion of the trial creating any kind of adverse interest in the vehicle in question.

Mrs. Manisha Singh, learned AC to GP 7 relying upon the counter affidavit dated 10.01.2020 filed on behalf of respondent no. 3 i.e. Superintendent of Police, Sitamarhi submits that liquor was seized from the vehicle in question and hence it is liable for confiscation. The proposal for confiscation proceeding under Section 58(1) of the Act has been transmitted by the S.P, Sitamarhi to the District Magistrate, Sitamarhi and proceeding would be concluded within one month. However there is no instruction with regard to initiation of confiscation proceeding.

On cursorily going through the materials on record, it appears that the seizure of the vehicle was made on 14.03.2019. The writ application was registered on 05.07.2019. Thereafter, vide order dated 25.09.2019 the matter was adjourned for eight weeks to enable learned GP- 7 seek instruction and file counter affidavit. The matter was further adjourned on 02.12.2019 as a last indulgence for 20.12.2019, however counter affidavit dated 10.01.2020 was filed on behalf of the Superintendent of Police only but no counter affidavit has been filed on behalf of the District Magistrate, Sitamarhi. Learned counsel for the State submits that despite repeated reminders no instruction has been received from

District Magistrate, Sitamarhi and as such, she is not in a position to convey whether any confiscation proceeding has been initiated or not.

Since counter affidavit suggests that confiscation proceeding has not been initiated, in the circumstances, we are constrained to direct for provisional release of the vehicle in question bearing Registration No. BR-30M-3858 till the conclusion of the trial.

Accordingly, we direct for provisional release of the vehicle bearing Registration No. BR-30M-3858 during pendency of the trial on the conditions mentioned hereinbelow to the satisfaction of learned ADJ II cum Special Judge Excise, Sitamarhi and if confiscation proceeding is initiated, in the meanwhile, to the satisfaction of learned Collector, Sitamarhi.

"(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. II -cum-Special Judge, Excise, Sitamarhi or the confiscation authority i.e. Collector, Sitamarhi, 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;

(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.

It is made clear that the concerned Court must conclude the release process within a period of ten days from the date of receipt / production of a copy of this order.

The writ petition stands disposed of.