

(2020) 02 PAT CK 0350

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 12589 Of 2019

Sanni Kumar @ Sanni Vishwakarma

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), 56, 73(e)

Constitution Of India, 1950 — Article 226, 227

Citation : (2020) 02 PAT CK 0350

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

Bench : Division Bench

Advocate : Sanjay Kumar, Vivek Prasad

Final Decision : Disposed Of

Judgement

Learned Counsel for the petitioner is permitted to make necessary correction in paragraph no. 1 of the writ application.

Heard Mr. Sanjay Kumar, learned counsel for the petitioner and Mr. Vivek Prasad, learned G.P. 7 for the respondents.

The present writ application has been filed for release of Hyundai I-20 Sportz car, bearing Registration No. BR07AC 3442, seized in connection with Babubarhi Police Station Case No. 12 of 2019, registered for the offences punishable under Sections 272, 273 of the Indian Penal Code and 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 prosecution case, as per the written report of Dinesh Kumar Ojha, Assistant Sub Inspector of Police, Babubarhi Police Station, submitted to the Station House Officer, Babubarhi Police Station, is to the effect that on 15.01.2019, during night patrolling, the vehicle in question was intercepted and two persons were apprehended on chase, who disclosed their names as Pintu Kumar and Sunny

Kumar and on search of the vehicle in question, 252 litres of Nepali Liquor were recovered, leading to registration of Babubarhi Police Station Case No. 12 of 2019.

It is submitted by learned Counsel for the petitioner that the petitioner is the registered owner of the vehicle in question and the certificate of registration of the seized vehicle has been brought on record by way of Annexure-2 to the writ petition. The vehicle in question is rotting under the open sky. It is further submitted that confiscation proceeding has not been initiated. The petitioner is ready to produce the motorcycle in question as and when required by the Court concerned and undertakes not to change the shape and nature of the motorcycle in question and also not to transfer or alienate the motorcycle in question.

The writ application was registered on 24.06.2019 and for the first time, the matter was heard on 13.09.2019 and the matter was adjourned for six weeks and again the matter was adjourned vide order dated 19.02.2020 for 24.02.2020 and from the counter affidavit, dated 26.02.2020, filed on behalf of respondent nos. 2 and 3, it is apparent that only after the second adjournment, the proposal for confiscation of the vehicle in question was sent by the Superintendent of Police, Madhubani on 22.02.2020 and on the same day, confiscation proceeding, vide Confiscation Case No. 1052 of 2020 has been initiated by the District Magistrate, Madhubani. The proposal for confiscation of the vehicle in question has not been sent by the seizing or detaining authority, rather the same has been transmitted to the District Magistrate, Madhubani by the Superintendent of Police, Madhubani and, thus, it appears that the confiscation proceeding has been initiated just to frustrate the provisions of the Act.

Mr. Vivek Prasad, learned Government Pleader No. 7, submits that the contents of the counter affidavit reflects that on the basis of the proposal sent by the Superintendent of Police, Madhubani, on 22.02.2020, vide letter no. 1423, the Confiscation Case No. 1052 of 2020 has been initiated by the District Magistrate, Madhubani, on the same day, i.e. on 22.02.2020 and notices have also been issued to the petitioner and the next date of hearing of the case has been fixed to 05.03.2020 (Annexure A series).

Having heard learned Counsel for the parties and on perusal of the record, it appears that the seizure has been made by the Assistant Sub-Inspector of Police, which is evident from the very opening line of the written report. Section 73(e) of the Act mandates the seizure by the police officer not below the rank of Sub-Inspector of Police. Valid seizure or detention is the sine qua non for initiating a confiscation proceeding under Section 56 of the Act. Hence, the seizure is apparently contrary to the provisions of the Act.

Considering the fact that once the confiscation proceeding is initiated, the exercise of discretionary jurisdiction under Article 226 of the Constitution of India, having self imposed restrictions can be exercised only in exceptional or in a monstrous situation. Considering the view taken by the Apex Court in the case

of State of Karnataka Vs. K. Krishnan, reported in (2000) 7 SCC 80 and in the case of State of West Bengal and Ors. Vs. Sujit Kumar Rana, reported in (2004) 4 SCC 129, a Full Bench of this Court in the case of Baleshwar Roy Vs. The State of Bihar and Ors., reported in 2018(4) PLJR 970, held 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."

However, since the confiscation proceeding has already been initiated, we are not inclined to interfere at this stage.

It is expected that the Respondent No. 2, the District Magistrate, Madhubani, shall conclude the proceeding of Confiscation Case No. 1052/2020 within a period of six weeks from the date of receipt/production of a copy of this order, in accordance with law.

The petitioner is also expected to appear regularly and participate in the confiscation proceeding.

Accordingly, with the above observation and direction, the present writ application is disposed of.

Let a copy of this order be communicated to the District Magistrate, Madhubani, through fax, immediately.