

(2020) 01 PAT CK 0369

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 24998 Of 2019

Vinod Sah @ Binod Sah

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 24-01-2020

Acts Referred:

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

Citation : (2020) 01 PAT CK 0369

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

Bench : Division Bench

Advocate : Dr. Kamal Deo Sharma, Kumar Manish

Final Decision : Disposed Of

Judgement

Heard Mr. Kamal Deo Sharma, learned counsel for the petitioner and Mr. Pankaj Kumar, learned A.C. to S.C. - 5 for the respondents.

The present writ application has been preferred for release of Bajaj Maxima three Wheeler in favour of the petitioner bearing Registration No.UP-60AT4423 which has been seized in connection with Buxar (T) P.S. Case No. 331 of 2019, registered for the offence punishable 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 relief, as claimed by the petitioner in paragraph No.1 of the writ application reads as follows :-

"1 (I) That this is an application for release of vehicle as a Bajaj Maxima three Wheeler bearing Registration No.UP-60AT 4423 which has been seized in connection with Buxar (T) P S. Case No.331 of 2019 on 14.04.19 u/s 30(a) of Bihar Prohibition and Excise (Amendment) Act, 2018.

(ii) For the issuance of other appropriate writ / writs, direction/directions, order/

orders as may be deem fit and proper."

The prosecution case got initiated on the basis of the written report submitted by Mr. Kapildeo Paswan, A.S.I. before the S.H.O., Buxar Town P.S. is to the effect that on 13.04.2019, at 11.45 A.M., during patrolling, a secret information was received that from a three wheeler vehicle, illicit liquor is being transported, whereupon, the vehicle in question was intercepted and 186.480 litres of Indian Made Foreign Liquor were recovered and the vehicle was seized, leading to registration of Buxar (T) P.S. Case No. 331 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-

2. It is further submitted by learned counsel for the petitioner that though the petitioner is named in the FIR but he never received any notice with regard to initiation of confiscation proceeding.

The counter affidavit filed on behalf of respondent No.3 and 4, District Magistrate, Buxar and Superintendent of Police, Buxar, respectively suggests that the confiscation proceeding has been initiated vide Confiscation Case No.101 of 2019 on submission of report vide Memo No.1551 of 2019 dated 22.06.2019. Since the petitioner failed to appear, hence substituted service of notice by paper publication in Hindustan daily newspaper dated 09.11.2019 has been made but till date, no one has appeared in the confiscation case and the matter has been fixed for 04.02.2020.

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 restriction can only be exercised in exceptional or a monstrous situation, such as when fundamental rights have been violated or the impugned order or the proceedings are wholly without jurisdiction or where the principle of natural justice has been violated or vires of the Act is under challenge. Considering the view taken by the Apex Court in the case of State of Karnataka vs. K. Krishna reported in (2000) 7 Supreme Court Cases 80 and in the case of State of West Bengal and Ors. vs. Sujit Kumar Rana reported in (2004) 4 Supreme Court cases 129, a Full Bench of this in the case of Baleshwar Roy vs. The State of Bihar and Ors. reported in 2018 (4) PLJR 970.

"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."

Considering the fact that confiscation proceeding has been initiated in November, 2019 and petitioner has not appeared, in the confiscation case till date and in view of the ratio laid down by the Hon'ble Supreme Court as well as Full Bench of this Court, we are not inclined to pass order for release of the vehicle in question for the present.

It is expected from the District Magistrate-cum-Collector, Buxar to conclude the confiscation proceeding within a period of six weeks from the date of production of a copy of this order. It is also expected from the petitioner to appear regularly

and participate in the confiscation proceeding.

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

It is made clear that we have not expressed any opinion on the merit of the case