

(2020) 02 PAT CK 0127

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 185 Of 2020

Vishnu Dev Viswas

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 03-02-2020

Acts Referred:

Indian Penal Code, 1860 — Section 272, 273
Bihar Prohibition And Excise Act, 2016 — Section 30(a)
Constitution Of India, 1950 — Article 226

Citation : (2020) 02 PAT CK 0127

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

Bench : Division Bench

Advocate : Bijendra Kumar Singh, Kumar Manish

Final Decision : Disposed Of

Judgement

Heard Mr. Bijendra Kumar Singh, learned counsel for the petitioner and learned A.C. to S.C.-5 appearing on behalf of the respondents.

The present writ application has been filed for release of Hero Splendor plus motorcycle bearing Registration No.BR-11AM9851 in favour of the petitioner, which has been seized in connection with Spl. Excise No.935 of 2019, arising out of Amour P.S. Case No.168 of 2019 registered of the offences punishable under Section 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 relief, as prayed for in paragraph No.1 of the writ application reads as follows :-

"1. That the petitioner abovenamed seeks refuge to this Hon'ble Court and humbly prays for issuance of writ, writs, for direction, directing the respondents authority specially the respondents no.3 (The District Magistrate-cum-The Collector, Purnea to release the vehicle (seized Hero Splendor Plus without

number, Chasis No.MBLHAW088K4A03459 in connection with Spl. Excise No.935 of 2019 which is rising out of Amour P.S. Case No.168 of 2019 under Section 272, 273 I.P.C. & 30(a) Bihar Prohibition and Excise Act, 2016 which has been seized by Respondent no.04 as the same is illegal perverse and made under the draconian law promulgated by the State of Bihar which is unconstitutional and fit to be set aside and vehicle/ Motorcycle in question be ordered to release in favour of the petitioner.

Prosecution case got initiated on the basis of self statement of Sub Inspector, Vijay Kumar Yadav submitted to S.H.O. Amour P.S. is to the effect that on 02.11.2019, during vehicle check, the motorcycle was intercepted and 5 litres of country made illicit liquor were recovered and the vehicle was seized, leading to registration of Amour P.S. Case No.168 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 of the vehicle in question has been brought on record as Annexure-2 to the writ application.

Learned counsel for the State relying upon the counter affidavit filed on behalf of respondent No.4 submits that the Confiscation Case No.53 of 2020 has already been initiated. The present writ application was registered on 06.01.2020 and the matter was adjourned till 27th January, 2020 vide order dated 13.01.2020 in order to enable the counsel for the State to seek instructions and filing of the counter affidavit and thereafter, the confiscation proceeding has been initiated vide Confiscation Case No.53 of 2020 and the same is pending before Respondent No.02, the Collector-cum-District Magistrate, Purnea. In such circumstances, learned counsel for the respondent-State prays for disposal of the writ application with a direction to respondent authority to conclude the confiscation proceeding within a time frame, if the same has not been concluded as yet.

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 be exercised only in exceptional or a monstrous situation. Such as when fundamental rights have been violated, the impugned order or the proceedings are wholly without jurisdiction or where the principle of natural justice has been grossly 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. Krishnan (2000) 7 Supreme Court Cases 80 and in the case of State of West Bengal and Ors. Vs. Sujit Kumar Rana, (2004) 4 Supreme Court Cases 129 and considering the ratio laid down by the Full Bench of this Court in the case of Baleshwar Roy Vs. The State of Bihar and Ors, 2018(4) PLJR 970, we are not inclined to pass order for release of the vehicle for the present.

In view of the discussions made above, respondent No.3, Collector-cum-District Magistrate, Purnea is expected to conclude the proceeding of Confiscation Case

No.53 of 2020, within a period of six weeks of receipt or production of a copy of 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.

The office is directed to communicate this order to the District Magistrate, Purnea through fax/email for its expeditious compliance.