

(2019) 12 PAT CK 0110

Patna High Court

Case No: Civil Writ Jurisdiction Case No. 13938 Of 2019

Swapan Kamal

APPELLANT

Vs

State Of Bihar
Through And Ors

RESPONDENT

Date of Decision: Dec. 6, 2019

Acts Referred:

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

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

Bench: Division Bench

Advocate: Md. Javed Jafar Khan, Manisha Prakash

Final Decision: Disposed Of

Judgement

1. The present writ application has been filed basically for a direction to the respondent authority to release the Scorpio four wheeler vehicle bearing

Registration No. BR-02W-3751, which has been seized in connection with Gaya Civil Lines P.S. Case No. 133 of 2019 registered for the offence

under Section 272, 273 of the Indian Penal Code and Section 30(a) of the Bihar Prohibition And Excise Act, 2018.

2. The relief claimed by the petitioner has been stipulated in paragraph no. 1 of the writ application, which reads as follows:-

“ (i) For issuance of writ in the nature of Mandamus or any other appropriate writ(s), order(s), directions to the respondents to release the Scorpio

four wheeler vehicle bearing Registration No. BR-02W-3751, having Chassis No. MA1TA2MWND2J39021, Engine No. MED4J15135 in favour of

the petitioner, which has been seized in connection with Civil Lines P S. Case No. 133 / 19 dated 16.03.19 registered for the offences under section

272, 273 of the Indian Penal Code and section 30(a) of the Bihar Prohibition and Excise Act, 2018.

(ii) For issuance of any other appropriate writ(s), order(s), direction(s) for which the petitioner is entitled in the facts and circumstances of the case.â€

3. The factual matrix of the case is that prosecution case got initiated on the written report of Sub Inspector of Police Rani Kumari, S.H.O., Civil

Lines P.S., Gaya that on 16.03.2019 at 8.10 P.M. on the basis of secret information, a vehicle checking was conducted near Maharani Bus Stand

where a white Scorpio bearing Registration No. BR-02W-3751 was intercepted. Subsequently, two persons on a motorcycle who were following the

Scorpio vehicle, were also intercepted who disclosed their name as, Aman Kumar and Manoj Kumar. The Scorpio vehicle was being driven by Akash

Kumar and the other person who was sitting, disclosed his name as Pappu Kumar. The accused person were arrested and the liquor was recovered

from one Bhola and it was to reach to the brother- in- law of Akash Kumar namely, Shiv Ramani. Consequently, Gaya Civil Lines P.S. Case No. 133

of 2019 was registered on 16.03.2019 under Sections 272 / 273 of the I.P.C. and Section 30(a) of the Bihar Prohibition And Excise Act, 2018 against

four persons namely, Akash Kumar, Pappu Kumar, Bhola and Shiv Ramani. The petitioner is not named in the First Information Report.

4. The petitioner claims that initially the Scorpio vehicle in question was purchased by one Nitin Kumar Garai, S/o Jawahar Lal Garai under

hypothecation with Punjab National Bank, Retail Asset Branch, Gaya but the original purchaser subsequently made default in making the payment of

the loan amount, and thereafter, the petitioner purchased the vehicle in auction sale. Consequently, the Punjab National Bank issued a letter dated-

08.02.2017 (annexed as Annexures- 2 & 2/1 to the writ petition) to the Registering Authority, Gaya to the effect that a sum of Rs. 8,50,000/- was

financed to Sri Nitin Kumar Garai for purchase of the vehicle in question. The vehicle was registered in the joint name of the borrower and the Punjab

National Bank, Retail Asset Branch, Gaya. On default being made by the borrower of the said vehicle it was sold in favour of the petitioner after due

notice to the borrower about auction sale and publication in two newspapers and ultimately it was sold to the petitioner. Hence, the Registering

Authority was requested to transfer the vehicle in the name of the petitioner-Swapan Kamal and hence the petitioner claims for the release of the vehicle in question in his favour.

5. A counter affidavit has been filed on behalf of the respondent nos. 2 and 3 duly affidavited on 23.10.2019 to the effect that confiscation proceeding

has been initiated and notice has been issued to the registered owner and consequently on notice being issued, the Confiscation Case No. 210 of 2019

has been initiated in the court of District Magistrate, Gaya and the registered owner- Nitin Kumar Garai has been issued notice on 24.06.2019. On

notice, none appeared in the confiscation proceeding on the next date fixed on 23.07.2019, and thereafter, vide order dated 08.08.2019 second time

notice was issued to the registered owner to appear on 03.09.2019, but even then, he did not appear.

6. Learned counsel for the petitioner submits that he is the bona fide auction purchaser and hence the vehicle should be released in his favour.

However, he admits that in spite of the recommendation being made by the Bank in question, the Registering Authority has not transferred the

registration certificate in the name of the petitioner.

7. Ms. Manisha Prakash, learned A.C. to Government Pleader No. 7 submits that confiscation proceeding has been initiated and notices have been

issued to the registered owner, Nitin Kumar Garai and he is not appearing and since petitioner is neither an accused in the case nor there is any

anything on record to suggest that he is the auction purchaser or he is the registered owner as such, no notice has been issued to him.

8. Having heard learned counsel for the parties it is an admitted position that till date the petitioner is not the registered owner of the vehicle in

question. The petitioner's claim of being an auction purchaser has not been disputed by the learned counsel appearing for the respondent- State.

From the material available on record, it is not apparent that the petitioner filed any application either before the Special Judge, Gaya where the case is

pending or before the Collector, Gaya where the confiscation proceeding is pending.

9. In these circumstances, since the petitioner right now is not a registered owner of the vehicle in question, we are not inclined to exercise

discretionary jurisdiction conferred under Article 226 of the Constitution of India. Accordingly, we dispose of the writ application with a liberty to the

petitioner to file an appropriate representation for redressal of his grievances before the Special Judge (Excise), Gaya as well as before the Collector,

Gaya where confiscation proceeding is pending and also if he, so advised, he may take appropriate steps for getting the registration of the vehicle

transferred in his name. It is expected from the Special Judge (Excise), Gaya or Collector, Gaya to dispose of the representation of the petitioner, if so

filed, expeditiously preferably within a period of six weeks in accordance with law.