

(2018) 07 PAT CK 0052

Patna High Court

Case No: Criminal Appeal (Sj) No. 617 Of 2015

Jimedar Thakur @
Jamindar Thakur And
Anr

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision: July 10, 2018

Acts Referred:

- Indian Penal Code, 1860 - Section 431, 511
- Explosive Substances Act, 1908 - Section 4
- Criminal Law Amendment Act, 1932 - Section 17
- Code Of Criminal Procedure, 1973 - Section 313

Citation: (2018) 3 PLJR 682

Hon'ble Judges: Aditya Kumar Trivedi, J

Bench: Single Bench

Advocate: Ashok Kumar Singh, Abhishek Kumar Singh, Z. Hoda

Final Decision: Allowed

Judgement

Heard Mr. Sanjay Kumar, learned counsel for the petitioner and Mr. Kumar Manish, learned SC-5 for the respondent-State.

The present writ application has been filed for release of Tata Safari vehicle bearing Registration No. BR01PB5873, in favour of petitioner, which has

been seized in connection with Kankarbagh P.S. Case P.R. No. 216 of 2019, registered for the offences punishable under Section 30(a) of 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

by learned counsel for the petitioner as stipulated in paragraph no.1 of the writ application reads as follows :-

“(i) To direct the respondent authorities to release the Tata Safari Car bearing registration No. BR01PB5873, chasis No. MAT403725CNH9674, Engine No. R09HXYJ18870 in favour of petitioner.”

The prosecution case is that the vehicle in question was intercepted and from the alleged vehicle, 85.500 litres of Indian Made Foreign Liquor were recovered, leading to registration of Kankarbagh P.S. Case P.R. No. 216 of 2019.

It is submitted by learned counsel for the petitioner that the petitioner claims to be the registered owner of the vehicle in question. The copy of the

registration certificate of the vehicle in question has been brought on record as Annexure- 2. Moreover, the vehicle in question was being used for

commercial purposes and one of the hirers misused the vehicle in question for transporting illegal liquor and ultimately seizure was made. The

petitioner was not present in the vehicle in question, while seizure was made. A statement has been made in paragraph no.6 of the petition that the

petitioner has received the notice dated 12.07.2019 issued in Excise Confiscation Case No. 856 of 2019-20, under the signature of Collector-cum-

District Magistrate, Patna, as contained in Annexure-3 to the petition, which suggests that confiscation proceeding has already been initiated whereby

the petitioner has been asked to file show cause.

It is submitted by learned S.C.-5 that confiscation proceeding has already been initiated and the proceeding of the confiscation case would be

concluded within a time frame.

Considering the settled law 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 in certain exceptional or monstrous situation, such as in case of violation of

fundamental right, gross violation of principle of natural justice or in case of impugned order or proceedings are without jurisdiction or vires of any 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, a Full Bench of this Court in the case

of Baleshwar Roy Vs. The State of Bihar and Ors , 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.â€

Since vehicle in question was seized on 20.03.2019, it is expected from the Collector/District Magistrate, Patna to conclude the proceeding of the

Excise Confiscation Case No. 856 of 2019-20 and dispose of the same by a reasoned and speaking order 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.