
(2018) 07 PAT CK 0053

Patna High Court

Case No: Criminal Miscellaneous No. 38841 Of 2014

M/S Celsius
Healthcare Pvt. Ltd.
And Ors

APPELLANT

Vs

State Of Bihar And Anr

RESPONDENT

Date of Decision: July 9, 2018

Acts Referred:

- Code Of Criminal Procedure, 1973 - Section 202, 205, 482
- Indian Penal Code, 1860 - Section 406, 420

Citation: (2018) 3 PLJR 864

Hon'ble Judges: Sanjay Priya, J

Bench: Single Bench

Advocate: Anirban Kundu, S. Eheteshamuddin, Parul Prasad, Sushila Agarwal

Final Decision: Dismissed

Judgement

Heard Mr. Satya Prakash, learned counsel for the petitioner and Mr. Vivek Prasad, learned G.P.-7 for the respondent -State.

The present writ application has been filed for release of Hero Splendor Motorcycle of the petitioner bearing Registration number BR 04Y 1944,

seized in connection with Mashrak P.S. Case No. 373 of 2019, registered under Sections 341, 323, 353 and 504/34 of the IPC and Sections 37(c) and

38 of Bihar Prohibition and Excise (Amendment) Act, 2016, as amended by Amendment Act 8 of 2018 (hereinafter referred to as "the Act").

The relief(s), as stipulated in paragraph no.1 of the petition, read(s) as follows:-

1(i) For issuance of writ in the nature of mandamus or any other appropriate writ for commanding the respondents to release the Hero Splendor

Motorcycle of the petitioner bearing Registration no. BR-04Y 1944, Chassis No. MBLHAR079HHM00332, Engine No.-HA10AGHHL88337 during

pendency of the confiscation proceeding as the same has been seized in connection with Mashrak P.S. Case No. 737 of 2019 dated 30.08.2019

registered under Sections 341, 323, 353, 504/34 of the Indian Penal Code and Sections 37(c) & 38 of the Bihar Prohibition and Excise Act, 2016.â€

The factual matrix of the case is that the vehicle in question was intercepted and all the three persons, riding the vehicle in question, were found in

intoxicated condition, leading to registration of FIR, being Mashrak P.S. Case No. 373 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 vehicle in question has been brought on record as Annexure-P-1. This is an admitted position that no recovery of liquor or intoxicant

was made from the vehicle in question. The seized vehicle is rotting under the open sky. It is further submitted that since there is neither recovery

from the vehicle in question nor the vehicle was used for carrying liquor or intoxicant, hence the same is not liable for confiscation under the provisions

of Section 56(b) of the Act. It is further submitted that the petitioner has preferred an application before the learned Additional Sessions Judge-II-

cum-Special Judge, Excise Court, Saran at Chapra for release of the vehicle in question, but the prayer of the petitioner has been rejected vide order

dated 21.10.2019, though, copy of the said order has not been brought on record. However, no confiscation proceeding has been initiated till date.

Statement to that effect has been made in paragraph no.8 of the petition, which reads as follows:-

â€œThat it is humbly stated that neither any confiscation proceeding has been initiated against the seized Hero Splendor Motorcycle of the petitioner

bearing Registration no. BR-04Y 1944, Chassis No. MBLHAR079HHM00332, Engine No.- HA10AGHHL88337 nor he has received any notice with

respect to any confiscation proceeding.â€

Learned GP 7 submits that this is an admitted position that neither any intoxicant nor liquor has been seized from the vehicle in question nor the same

has been used for carrying any such prohibited article. Hence, prima facie, it is not liable for confiscation. Hence, learned counsel for the respondents

has no objection with regard to the provisional release of the vehicle in question.

However, learned counsel for the respondent does not have any instruction with regard to the initiation of confiscation proceeding. Even if the

authority choose to initiate such proceeding then they have to comply the mandatory direction given in the case of Diwakar Kumar Singh Vs. The

State of Bihar and Ors., 2018 (3) PLJR 403, wherein it has been held that it shall be mandatory for the confiscating authority, before passing final

order in confiscation proceeding, in the circumstances, when the person is found in drunken condition, but neither liquor is seized nor the vehicle has

been used for transportation of the liquor, to decide it as a preliminary issue whether in such a condition, the vehicle would be liable for confiscation

under Section 56 of the Act otherwise further proceeding in confiscation proceeding shall be prohibited. For strict compliance of the said order, copy

of the said order was to be communicated to all the District Magistrates of the State through the office of the Advocate General.

Having heard learned counsels for the parties, it is relevant to examine the provision of Section 56 of the Act which provides the conditions in which

anything can be liable for confiscation. Section 56 of the Act reads as follows:-

“56. Things liable for confiscation.- Whenever an offence has been committed, which is punishable under this Act, following things shall be liable to

confiscation, namely-

(a) any intoxicant, liquor, material, still, utensil, implement, apparatus in respect of or by means of which such offence has been committed;

(b) any intoxicant or liquor unlawfully imported, transported, manufactured, sold or brought along with or in addition to, any intoxicant, liable to

confiscation under clause(a);

(c) any receptacle, package, or covering in which anything liable to confiscation under clause (a) or clause(b), is found, and the other contents, if any,

of such receptacle, package or covering;

(d) any animal, vehicle, vessel or other conveyance used for carrying the same.

(e) any premises or part thereof that may have been used for storing or manufacturing any liquor or intoxicant or for committing any other offence

under this Act.â€

Section 56(d) of the Act is relevant, which suggests that any animal, vehicle, vessel or other conveyance used for carrying the intoxicant is liable for

confiscation.

This is admitted fact that there was neither recovery of liquor nor intoxicant from the vehicle in question nor liquor was carried through the vehicle in

question. This is also an admitted position that the confiscation proceeding has not been initiated. In the circumstances, prima facie, it appears that

under Section 56 of the Act, the seized vehicle is not liable for confiscation, as it has not been used for carrying liquor.

Since there is a bar under Section 60 of the Act for any court to pass any order with regard to the seized vehicle, the Special Judge has no jurisdiction

to release the vehicle. However, this bar under Section 60 of the Act will not apply in exercise of the jurisdiction under Article 226 of the Constitution

of India. Hence, in such a circumstance, the case comes within one of the exceptions where the discretionary jurisdiction under Article 226 of the

Constitution of Indian can be exercised for releasing the vehicle seized, as has been held in the case of Whirlpool Corporation Vs. Registrar of Trade

Marks, Mumbai and Ors., reported in (1998) 8 Supreme Court Cases 1. Paragraph 15 reads as follows:-

â€œ15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a

writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the

Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bare in at

least three contingencies, namely, where the Writ Petition has been filed for the enforcement of any of the Fundamental rights or where there has

been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

There is a plethora of case law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary

era of the constitutional law as they still hold the field.â€

In the facts and circumstances of the present case, no useful purpose will be served in allowing the vehicle to rot under open sky leading to a complete

waste of public money. Keeping the vehicle in such condition and allowing it to rot, which has been deprecated by the Supreme Court in the case of

Sunderbhai Ambalal Desai Vs. State of Gujrat and other analogous cases (2002) 10 SCC 28 3and in the case of General Insurance Council and Ors.

Vs. State of Andhara Pradesh and Ors. (2010) 6 Supreme Court Cases 768.

Moreover, learned counsel for the respondents has no objection to the provisional release of the vehicle, hence we direct that the same be released

provisionally till the conclusion of the trial on the following conditions to the satisfaction of learned Additional District Judge-cum-Special Judge,

Excise, Saran:

(I) The petitioner will produce the proof of valid certificate of registration/ownership in his favour including the insurance papers of the vehicle in

question;

(II) The petitioner will furnish bank guarantee of rupees fifty thousand, with two sureties of the like amount to the satisfaction of the Special Court

concerned or the confiscation authority, as the case may be;

(III) The petitioner shall give an undertaking on affidavit that he will not deal with the vehicle in question or alienate or encumber the same creating

any kind of adverse interest against the interest of the State during the pendency of the confiscation proceeding;

(IV) The petitioner will not use the vehicle for any illegal purpose and as and when required, he will produce the vehicle in question before the court or

authority concerned.

(V) At the time of release of the vehicle in question, the concerned court or authority shall get prepared photo copy of the vehicle in question duly

certified in presence of the petitioner;

(VI) Panchnama of the vehicle in question shall also be prepared and will be kept on record which may be used as secondary evidence and the

petitioner will furnish an affidavit incorporating therein an undertaking not to challenge the said photo copy or panchnama so prepared in his presence

at the time of release of the vehicle in question for use in course of the trial or confiscation proceeding as the case may be.

The entire exercise will be done by the Special Judge within ten days of receipt/production of a copy of this order.

It is made clear that we have not expressed any opinion with regard to the merits of this case or with regard to the ownership of the vehicle in question.

Accordingly, the writ application is allowed to the extent as indicated above.