

(2020) 01 PAT CK 0214

Patna High Court

Case No: Civil Writ Jurisdiction Case No. 78 Of 2020

Rakesh Kumar

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision: Jan. 14, 2020**Acts Referred:**

- Bihar Prohibition And Excise Act, 2016 - Section 30(a), 92(2)
- Constitution Of India, 1950 - Article 226

Hon'ble Judges: Dinesh Kumar Singh, J; Anil Kumar Sinha, J**Bench:** Division Bench**Advocate:** Manoranjan Prasad, Kumar Manish**Final Decision:** Disposed Of

Judgement

Heard Mr. Manoranjan Prasad, 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 Pickup van of the petitioner, bearing Registration No. BR 31GA 3039, seized in connection

with Chowk P.S. Case No. 448 of 2018, registered 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 prayed for, as stipulated in paragraph no.1 of the writ application reads as

follows:-

1(i) For commanding the respondents to immediately release the Pick-up Van bearing No. BR-31GA-3039, Chasis Number-MAT445082FCI3018,

Engine Number-2751D106CUYS27541 belonging to the petitioner which has been seized in most arbitrary and mala fide manner pursuant to institution

of Chowk P.S. Case No. 448/2018 dated 15.11.18 for offence alleged under section 30(a) of the Bihar Prohibition and Excise Act, 2016.

(ii) For any other appropriate relief/reliefs to which the petitioner is found entitled in the facts and circumstances of this case.â€

Factual matrix of the case is that from the vehicle in question, 81 litres of Indian Made Foreign Liquor were recovered, leading to registration of

Chowk P.S. Case No. 448 of 2018.

It is submitted by learned counsel for the petitioner that the petitioner was not driving the vehicle in question at the time of seizure, though, he is the

bona fide owner of the vehicle in question and a copy of the registration certificate of the seized vehicle has been brought on record, as Annexure-3. It

is further submitted that since the vehicle in question is rotting under the open sky, hence the same may be released in favour of the petitioner.

Learned SC-5 submits that the vehicle in question has already been confiscated, vide order dated 24.12.2019, passed by the Collector-cum-District

Magistrate, Patna in Confiscation Case No. 2032 of 2018-19, a copy of the said order has been brought on record, let the same be kept on record and

the contention of the learned counsel for the respondent-State has not been controverted by learned counsel for the petitioner.

Considering the fact that the final order has been passed by the Collector in the confiscation proceeding and Section 92(2) of the Act provides an

alternative efficacious remedy of appeal against the order passed by the Collector within ninety days of the order complained of before the Excise

Commissioner, hence, this Court is not inclined to interfere in the matter.

It is well settled law that the discretionary jurisdiction under Article 226 of the Constitution of India, which is subject to self-imposed restriction, can be

normally exercised when there is no alternative efficacious remedy available or 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 under challenge. The Apex Court in the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai

and Ors., reported in (1998) 8 Supreme Court Cases 1 has held as follows:-

15. 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 bar 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.

Accordingly, this writ application is disposed of with a liberty to the petitioner to prefer an appeal within a period of four weeks along with an

application for condonation of delay.

If such appeal is filed by the petitioner, the appellate authority is expected to consider application for condonation of delay in view of the fact that the

writ application of the petitioner was pending before this Court and dispose of the appeal within a period of ten weeks from the date of its filing.

Needless to say, in case the vehicle in question has not been auctioned sold till date, it will not be put on auction sale till the disposal of appeal before

the appellate authority, if so filed.