
(2020) 01 PAT CK 0356

Patna High Court

Case No: Civil Writ Jurisdiction Case No. 24565 Of 2019

Manish Kumar

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision: Jan. 23, 2020

Acts Referred:

Bihar Prohibition And Excise Act, 2016 " Section 30(a), 58(1), 73(e)

Citation: (2020) 01 PAT CK 0356

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

Bench: Division Bench

Advocate: Anjani Kumar Sinha, Kumar Manish, Prashant Kumar

Final Decision: Allowed

Judgement

Heard Mr. Anjani Kumar Sinha, learned counsel for the petitioner and Mr. Prashant Kumar, learned A.C. to S.C. - 5 for the respondents.

The present writ application has been preferred for release of Auto Rickshaw of the petitioner bearing Registration No. BR-07-PB-2892 which has

been seized in connection with Darbhanga Sadar Mabbi (O.P.) P.S. Case No. 429 of 2018, registered for the offence punishable 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 prosecution case got initiated on the basis of the written report submitted by Mr. Brij Bihari Narayan Singh, A.S.I. of Police, submitted before the

S.H.O., Mabbi (O.P.), Darbhanga is to the effect that on 27.10.2018, at 3.40 A.M., during patrolling, a secret information was received that from an

Auto Rickshaw, illicit liquor is being transported, whereupon, the vehicle in question has been intercepted and 26 bottles of 300 ml Country Made

Nepali Liquor were recovered and the vehicle was seized, leading to registration of Darbhanga Sadar Mabbi (O.P.) P.S. Case No. 429 of 2018.

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

has been brought on record as Annexure-2. It is further submitted that though Confiscation Case No. 179 of 2019 has been initiated, but it has not

been concluded till dated and the vehicle in question is rotting in the open sky. It is further submitted that the seizure has been made by an A.S.I.,

whereas, Section 73(e) of the Act stipulates that the seizure cannot be made by an officer below the rank of Sub Inspector of Police. Section 58 (1) of

the Act mandates that anything is liable for confiscation under the Act, is seized or detained, the officer seizing and detaining such property shall

without any reasonable delay submit a report to the District Collector, but the order dated 09.08.2019 passed by the Collector-cum-District Magistrate,

Darbhangha, as contained in Annexure-A to the counter affidavit reflects that the proposal for confiscation of the vehicle in question has been

transmitted by the Sr. Superintendent of Police, Darbhanga while the seizure was made by the A.S.I.. The order further reflects that the said

proceeding was conducted by the Deputy Collector. Hence, the vehicle in question may be released subject to the result of the confiscation

proceeding.

Mr. Prashant Kumar, learned AC to SC 5 made submission on the basis of counter affidavit filed on behalf of respondents, though it is not mentioned

in the counter affidavit that on whose behalf it has been filed. The counter affidavit has been duly sworn by Mr. Ganesh Prasad, Excise

Superintendent, Darbhanga. Paragraph 5 of the counter affidavit suggests that on the proposal of the Sr. Superintendent of Police, Darbhanga,

Confiscation Proceeding No. 179 of 2019 has been initiated and the notices have been issued to the petitioner on 13.08.2019. Hence, in that

background, he prays that the vehicle in question may not be released.

Having heard learned counsels for the parties and considering their rival submissions, we are of the considered view that the FIR was lodged and

seizure has been made by A.S.I. of Police whereas Section 73(e) of the Act stipulates that the seizure cannot be made by an officer below the rank

of Sub Inspector of Police. Hence, the very seizure appears to be de hors the provisions of the Act. Section 73(e) of the Act reads as under :-

“73. Power to enter, inspect, search and seize. Any of the following officers namely:

(e) Any police officer not below the rank of Sub Inspector; or

Section 58 (1) of the Act mandates that anything is liable for confiscation under the Act, the seizing and detaining authority shall without any

reasonable delay submit a report to the District Collector who has jurisdiction over the said area. But in the present case, it appears from perusal of

order dated 09.08.2019, passed in Confiscation Case No. 179 of 2019, as contained in Annexure-A to the counter affidavit that the FIR was registered

on 27.10.2018, the recommendation was made by the Sr. Superintendent of Police, Darbhanga, on 16.07.2019, after about more than eight months of

the date of seizure, which is contrary to the provisions of Section 58(1) of the Act. Moreover, the Collector has not considered all these facts and

mechanically the confiscation proceeding has been initiated which suggests the callous manner in which the quasi judicial function is being

discharged. The orders dated 27.09.2019, 08.11.2019, 10.12.2019 and 10.01.2020 passed in the aforesaid confiscation proceeding suggest that it has

been conducted by the Sr. Deputy Collector, who has no authority to conduct the proceeding under Section 58(1) of the Act. Moreover, there is

nothing on record to suggest that the said officer has been authorized by the Government to exercise the powers and perform the functions of the

Collector-cum- District Magistrate under the Act.

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 to reduce it into a junk, would ultimately result into waste of public money

has been deprecated by the Supreme Court in the case of Sunderbhai Ambalal Desai Vs. State of Gujrat and other analogous cases reported in (2002)

10 SCC 283 and in the case of General Insurance Council and Ors. Vs. State of Andhara Pradesh and Ors. reported in (2010) 6 Supreme Court

Cases 768.

Accordingly, we direct that the same be released provisionally till the conclusion of the trial or till the conclusion of confiscation proceeding, if any, on

the following conditions to the satisfaction of learned Additional District and Sessions Judge-cum-Special Judge (Excise), Darbhanga:

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

(II) The petitioner will furnish surety bond of Rs. 75,000/- but not in the form of bank guarantee or cash, with two sureties of the like amount to the

satisfaction of the A.D.J.-cum-Special Judge, Excise, Darbhanga 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 learned Court below 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, but it is expected from the Collector-cum-District Magistrate, Darbhanga, to conclude the proceeding of Excise Confiscation Case No. 179

of 2019 within a period of six weeks, in view of the discussions made above strictly in accordance with law.

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