
Jamila Khatoon Vs State Of Bihar And Ors

Civil Writ Jurisdiction Case No. 24705 Of 2019

Court: Patna High Court

Date of Decision: July 6, 2020

Acts Referred:

Bihar Prohibition And Excise Act, 2016 " Section 30(a), 37(b), 37(c), 60#Code Of Criminal Procedure, 1973 " Section 451

Hon'ble Judges: Sanjay Karol, CJ; S. Kumar, J

Bench: Division Bench

Advocate: Bijay Prakash Singh, Kumar Manish

Final Decision: Disposed Of

Judgement

Heard learned counsel for the petitioner and learned counsel for the respondents.

Petitioner has prayed for the following relief:-

“ (i) For issuance of writ in the nature of CERTIORARI for quashing the order dated 28.11.2019 as contained in Mairwa P.S. Case No. 257 of

2019 passed by the learned 2nd Additional Sessions Judge Cum Special Judge, Siwan, in which petitioner moved for the release of the Scorpio vehicle

in question and same has been rejected by him.

(ii) For issuance of writ in the nature of Mandamus to direct the respondents to release the vehicle Scorpio bearing Registration No. BR29-PA-4407,

Chassis NO. MA1TA2TDKJ2B20139, Engine No. TDJ4A83990 of the petitioner which was seized in connection with Mairwa Police Station Case

No. 257 of 2019 registered u/ss 30(a), 37(b) and 37(c) of the Bihar Prohibition and Excise Act, 2016.”

Allegation is of recovery of 500 ml Beer from the pocket of co-accused Sonu Chauhan.

It has been submitted by learned counsel for the petitioner that petitioner is the owner of the vehicle and neither any illicit liquor was recovered from

the vehicle in question nor owner of the vehicle Jamila Khatoon(petitioner) has been made party, as such, the vehicle is not liable for confiscation.

It has been submitted on behalf of petitioner that confiscation proceeding has been initiated. However, even if, any confiscation proceeding has been

initiated, same is to be dropped by the confiscating officer, in view of decision of appellate authority.

It has been submitted by learned counsel for the State that in case of no recovery of any illicit liquor from the vehicle, the vehicle is not liable for

confiscation and same has been decided by the Excise Commissioner, Bihar, Patna, in appeal of confiscation being Case No. 107 of 2019 (arising out

of Tariyani P.S. Case No. 184 of 2018) titled as (Ajit Rai & Ors Vs. The Collector, Sheohar).

As the seized vehicle is not liable for confiscation, bar of jurisdiction in confiscation under Section 60 of the Excise Act is not applicable and the

Special Court (Excise) can exercise jurisdiction under Section 451 of Cr.P.C for release of the vehicle during pendency of criminal trial.

Accordingly, petitioner is directed to file an application before the concerned Special Court (Excise), under Section 451 of Cr.P.C for release of the

vehicle which has been seized by the police in the case as same is not liable for confiscation and bar of jurisdiction in confiscation under Section 60 of

the Excise Act, 2016 will not be applicable and as such it is the Special Court (Excise), which can pass an order for release of the vehicle, with terms

and conditions of release as usually imposed. If any such application is filed by the petitioner same to be disposed of within 30 days from the date of

filing of said application.

With the aforesaid observation and direction, this writ petition is disposed of.