

(2020) 07 PAT CK 0091

Patna High Court

Case No: Civil Writ Jurisdiction Case No. 23068 Of 2019

Ganga Kumar

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision: July 7, 2020

Acts Referred:

- Indian Penal Code, 1860 - Section 272, 273
- Bihar Prohibition And Excise Act, 2016 - Section 30(a), 56, 60

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

Bench: Division Bench

Advocate: Devendra Prasad Singh, Vikash Kumar

Final Decision: Disposed Of

Judgement

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

Petitioner has prayed for following relief:-

â€œThe present writ application is for issuance of an appropriate direction to the respondent concern specially to respondent no.4 directing therein to release the vehicle bearing Honda Shine Motorcycle Regn. No. JH10AT-2173(Motorcycle) in favour of the petitioner.

And further an appropriate action be taken against the respondent no.3 for his wilfully non-compliance of order dated 7.12.2018 of the learned court

below i.e., the learned court below i.e., the learned A.D.J. II-cum-Special Judge, Nawada as passed in Kashichak P.S. Case No.140 of 2018 by

which the respondent has been directed to hand over the vehicle bearing Regn. No. JH10AT-2173 which has been seized in Kashichak P.S. Case

No.140/2018 under Sections 272, 273 of the Indian Penal Code and Section 30(a) of the Excise Act.

Allegation is recovery of country made liquor from the possession of accused while they were riding on motorcycle and as such country made liquor

as well as motorcycle was seized for committing offence under the Excise Act giving rise to Kashichak P.S. Case No.140/2018.

As there is recovery of illicit liquor from possession of accused and motorcycle was used for its transportation, as such, the vehicle is liable for

confiscation under Section 56 of the Act and in view of Section 60 there is bar of jurisdiction in confiscation under the Act and no court has jurisdiction

to make any order with regard to such property which are liable for confiscation except the Collector of the district as such, petitioner cannot derive

any benefit from the order of release of vehicle passed by the Special Judge although the Special Court has observed that there is no confiscation

report.

Counter affidavit has been filed in which it has been stated that proposal of Police Nawada dated 10.11.2018 has been received for initiation of

confiscation proceeding of vehicle and accordingly by order dated 12.1.2019, confiscation case No.9(M)/2019 has been initiated under Section 58 of

the Excise Act against the owner of the vehicle and notices were issued to petitioner for his appearance .

It has been submitted on behalf of counsel for the State that final ex parte order has already been passed by the DM- cum- Confiscating Officer as in

spite of notice, petitioner did not appear.

The writ petition is disposed of with liberty to petitioner to avail the statutory remedy of appeal against the order passed by the Confiscating Officer

and if any, appeal is preferred by the petitioner, the delay in filing appeal may be condoned by the appellate authority as the matter remained pending

before this Court and appeal be decided on merit. It is open for the petitioner to raise all grounds available to him under law.