

(2020) 07 PAT CK 0092

Patna High Court

Case No: Civil Writ Jurisdiction Case No. 23156 Of 2019

Abhay Shankar Singh And Anr

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision: July 7, 2020

Acts Referred:

- Bihar Prohibition And Excise Act, 2016 - Section 56, 60
- Code Of Criminal Procedure, 1973 - Section 451

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

Bench: Division Bench

Advocate: Sanjay Kumar, Kumar Manish

Final Decision: Disposed Of

Judgement

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

Petitioner has prayed for following reliefs:-

(i) To direct the respondent authorities to release the Bajaj Platina Motorcycle bearing Registration No.BR22F8982, Engine No.JNUBSM08993,

Chassis No.MBLGAP825HGE114 in favour of petitioner No.1 and Hero Glamour Black Red Colour motorcycle bearing Registration

No.BR22AA3940,Chasis No.MBLJAR025HGE11438, Engine No.JA06ERHGE45455 in favour of petitioner No.2.â€

(ii) To grant any other relief/reliefs for which the petitioners are found entitled in the facts and circumstances of the case.â€

It has been submitted on behalf counsel for the petitioner that from FIR as well as seizure memo, it is apparent that no illicit liquor was recovered from

two seized motorcycles as such, motorcycles are not liable for confiscation under Section 56 of the Bihar Prohibition and Excise Act, 2016.

It is submitted by the petitioner that no confiscation case has been initiated against the seized motorcycles which belong to petitioner and he has not

received any such notice. In view of several judgments passed by this Court as well as order passed by the Excise Commissioner in Appeal being

Confiscation case No.107 of 2019 (Ajit Rai and others versus Collector, Shivwhar) as no illicit liquor has been recovered from the seized motorcycles,

same are not liable for confiscation and as such bar of jurisdiction in confiscation under Section 60 of the Excise Act is not applicable and concerned

Special Court (Excise) can exercise its jurisdiction under Section 451 of Cr.PC for release of the motorcycles during pendency of criminal trial.

Counter affidavit has been filed by the respondents in which it has been stated that illicit liquor was recovered from the house of accused Ravi

Bhushan Tiwary and two motorcycles were also parked. A proposal for confiscation of the vehicles was sent under letter no.1363 dated 10.12.2019 to

the District Magistrate, West Champaran, Bettiah.

In view of several judgments passed by this Court on basis of which the Excise Commissioner has held, as stated above, if no illicit liquor has been

recovered from the vehicle, same is not liable for confiscation as such, no confiscation proceeding can be initiated against these vehicles and if any,

has been initiated, same is directed to be dropped.

The writ petition is disposed of with liberty to petitioner to file a petition under Section 451 of Cr.pc. for release of motorcycles before the concerned

Special Court (Excise) and the motorcycles shall be provisionally released in favour of petitioner after due identification and upon producing the

ownership documents and registration certificate upon terms and conditions as usually imposed by the trial court while provisionally releasing the

vehicle during pendency of trial within 30 days from the date of filing of such petition by the petitioner along with a copy of order passed by this Court.