

(2020) 07 PAT CK 0097

Patna High Court

Case No: Civil Writ Jurisdiction Case No. 24864 Of 2019

Mani Bhushan Kumar

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision: July 7, 2020

Acts Referred:

- Indian Penal Code, 1860 - Section 272, 273, 279, 337, 338, 427
- Bihar Prohibition And Excise Act, 2016 - Section 37(B)(c), 60
- Code Of Criminal Procedure, 1973 - Section 451

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

Bench: Division Bench

Advocate: Ajay Kr Singh, Vikash Kumar

Final Decision: Disposed Of

Judgement

Heard learned counsel for the petitioner and the State.

Petitioner has prayed for following relief:-

â€œ(1) For issuance of a writ in the nature of writ of mandamus directing the respondents to release the Mahindra Bolero DI 2WD 85 TR BS 2 Jeep

bearing registration No.BR01PA8402, Chassis No.MAIXA2G FKA5B â€“ 65317, Engine No. GFA4B18622 in the favour of the petitioner. The said

vehicle has been seized in Shahjahanpur P.S. Case No.31/2019 under various sections of I.P.C., Bihar Prohibition Excise Act 2016 and Motor Vehicle

Act.

(2) For issuance of any other appropriate writ as this Honâ€™ble Court may deem fit and proper.â€

Allegation is driving the bolero vehicle bearing registration No.BR01PA 8402 in a rash and negligent manner and in a drunken condition by the driver

of said vehicle causing accident in which two persons were injured and vehicle was also damaged giving rise to Shahjahapu P.S. Case 31 of 2019

dated 1.5.2019 instituted under Sections 279, 337, 338, 427 of IPC and 37(B)(c) of Bihar Prohibition and Excise Act and thereafter vehicle was seized.

Petitioner claims to be owner of the vehicle and since there is no recovery of any illicit liquor and allegation is driving vehicle in a drunken condition as such, vehicle is not liable for confiscation and bar of jurisdiction in confiscation under Section 60 of the Excise Act is not applicable, as such concerned

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

In view of law laid down by Division Bench of this Court in case of Diwakar Kumar Singh vs. State of Bihar since reported in 2018 (3) PLJR 403 and

following said judgment as well as other judgments passed by this Court, the Excise Commissioner, Bihar Patna in appeal arising out of Confiscation

Case No. 107 of 2019 Ajit Roy Vs. Collector, Sheohar has held that transportation of prohibited article under the Act is a sine qua non for a vehicle to be confiscated.

The relevant paragraph of order passed in Appeal by Excise Commissioner is quoted below:-

â€œFrom the aforesaid judgment and order passed by the Honâ€™ble High Court of Patna it is well established that the transportation of prohibited article under the Act, 2016, is a sine qua non for a vehicle to be confiscated on the passing of an order by the District Collector. Therefore the confiscation order passed by the learned Collector, Sheohar in confiscation Case No. 107/2019 on 09.12.2019 is hereby ordered to be modified to the extent that the three motorcycles bearing registration No. BR-06BJ 6591; BR-06BL 5384 and BR-55 4036 will be released after verifying the document related to registration and owner of the said vehicle.â€

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

Special Court (Excise), where the trial of case arising out of Shahjahapu P.S. Case 31 of 2019 is pending and the Special Court (Excise) is directed to dispose of such petition within 30 days from the date of filing.