

(2020) 07 PAT CK 0113

Patna High Court

Case No: Civil Writ Jurisdiction Case No. 644 Of 2020

Ashish Kumar Paswan @ Ashish
Kumar

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision: July 8, 2020

Acts Referred:

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

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

Bench: Division Bench

Advocate: Sanjeev Kumar Singh, Vivek Prasad

Final Decision: Disposed Of

Judgement

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

Petitioner has prayed for following reliefs:-

“This is an application for issuance of an appropriate writ for the order or direction, directing the respondents to release the vehicle (Tempo) vide

Reg. No. BR-11GC-5752 in favour of the petitioner which has been seized in connection with Katihar Nagar Sahayak P.S. Case No.527 of 2019,

dated 10.08.2019, u/s 279, 337, 338 of the IPC and 37(b) of Bihar Prohibition and Excise Act in which the confiscation proceeding is not initiated by

the learned court of District Magistrate, Katihar.

And for any other relief for which the petitioner is found to be entitled in the facts and circumstances of the case.”

Allegation is driving and travelling on a tempo in a drunken condition after consuming liquor as a result of which, tempo met with an accident and turned turtle and driver and occupants of the tempo fell on the ground for which FIR was instituted giving rise to Katihar Nagar Sahayak P.S. Case

No. 527 of 2019, dated 10.08.2019, instituted under Sections 279, 337, 338 of the IPC and 37(b) of Bihar Prohibition and Excise Act.

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:-

“From the aforesaid judgment and order passed by the Hon^{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.”

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 Katihar Nagar Sahayak P.S. Case No. 527 of 2019 is pending and the Special Court

(Excise) is directed to dispose of such petition within 30 days from the date of filing.
such petition within 30 days from the date of filing.