

Vikash Kumar Chaudhary Vs State Of Bihar And Ors

Court: Patna High Court

Date of Decision: July 8, 2020

Acts Referred: Bihar Prohibition And Excise Act, 2016 " Section 30(a), 60
Code Of Criminal Procedure, 1973 " Section 451

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

Bench: Division Bench

Advocate: Pankaj Kumar, 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:-

“To release the motorcycle bearing registration No. BR33S-7765, Engine No. OE4KF2839565, Chasis No.MD634KE45F2K03805 of the petitioner

which has been seized in connection with Tajpur (Halai O.P.) P.S. Case No. 396/2018, registered owner of the vehicle No.BR33S-7765, Engine

No.OE4KF2839565, Chasis No.MD634KE45F2K03805 as the same has been seized by the Tajpur Police in connection with Tajpur (Halai O.P.) P.S.

Case No.396 of 2018 registered for the offence under Section 30(a) of Bihar Prohibition of Liquor and Excise Amendment Act, 2016 against the

F.I.R. named accused person aforesaid vehicle seized for the alleged violation of Excise Act.

(ii) For any other relief/reliefs for which the petitioner is found to be entitled in the facts and circumstances of the case.”

Informant has alleged that accused persons were apprehended while they were standing along with their motorcycle in a drunken condition and

confessed of having indulged in illicit trade of liquor and 7 litre 875 millilitre of foreign liquor was recovered from turmeric field for which FIR was

instituted giving rise to Tajpur (Halai O.P.) P.S. Case No.396 of 2018 registered under Section 30(a) of Bihar Prohibition and Excise Act and both

motorcycles and illicit liquors were seized.

Petitioner claims to be owner of the vehicle and since there is no recovery of any illicit liquor and allegation is standing along with motorcycle in a

drunken condition and recovery of illicit liquor from a turmeric field on their disclosure, 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 Tajpur (Halai O.P.) P.S. Case No.396 of 2018 is pending and the Special Court (Excise)

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