
Anand Kumar Vs State Of Bihar And Ors

Civil Writ Jurisdiction Case No. 2189 Of 2020

Court: Patna High Court

Date of Decision: July 9, 2020

Acts Referred:

Indian Penal Code, 1860 " Section 414#Bihar Prohibition And Excise Act, 2016 " Section 30(a), 56, 60#Code Of Criminal Procedure, 1973 " Section 451

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

Bench: Division Bench

Advocate: Sanjeev 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 relief:-

“For issuance of a writ in the nature of mandamus or any other appropriate writ, order/s, direction commanding the respondents to release the

Pulsar motorcycle of the petitioner bearing registration No.BR-22AK/2195 which has been seized in connection with Bettiah Town P.S. Case

No.893/2019 registered u/s 414, IPC and 30(a) of the Bihar Prohibition and Excise Act, 2016.

B. For any other relief/s to which the petitioner is found entitled to.”

Informant is a police officer who in his complaint has stated that he received information from high officials that in Baswaria Ambedkarnagar, country

made liquor is being prepared and upon receiving such information, he raided several houses and from the house of Umrawati Devi, articles/utensils

for preparation of illicit liquor as well as illicit country made liquor and two motorcycles were recovered and thereafter articles / utensils, illicit country

made liquor and motorcycles were seized and FIR was lodged giving rise to Bettiah Town P.S. Case No.893/2019 registered under Section 414 of

IPC and Section 30(a) of Bihar Prohibition and Excise Act.

It is submitted on behalf of petitioner that no illicit liquor has been recovered from the seized vehicle which is apparent from the FIR as well as seizure

memo as such seized vehicle is not liable for confiscation under Section 56 of the Excise Act and bar of jurisdiction in confiscation as contemplated

under Section 60 of the Act is not applicable and the Special Court, Excise where the excise case is pending has jurisdiction to pass order of

provisional release of the vehicle.

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. 107/2019 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.

It is submitted that no confiscation proceeding has been initiated by the District Collector against the said vehicle, however, if any, confiscation

proceeding has been initiated, same is directed to be dropped.

Accordingly, petitioner is directed to file an application before the concerned Special Court (Excise) under Section 451 of Cr.P.C. for interim release

of the vehicle which has been seized by the police in the case as same are not liable for confiscation and as such it is the Special Court (Excise),

which can pass an order for interim release of the vehicle, with terms and conditions of release as usually imposed. If any such application is filed by

the petitioner same to be disposed of within 30 days from the filing of said application.

With the aforesaid observation and direction, this writ petition is disposed of.