

(2020) 07 PAT CK 0328

Patna High Court

Case No: Civil Writ Jurisdiction Case No. 5455 Of 2020

Keshanath Singh @ Keshnath
Singh

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision: July 9, 2020

Acts Referred:

- Bihar Prohibition And Excise Act, 2016 - Section 30, 30(a), 38(i)(ii), 56, 60
- Code Of Criminal Procedure, 1973 - Section 451

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

Bench: Division Bench

Advocate: Ajay Kumar Tiwary, Vivek Prasad

Final Decision: Disposed Of

Judgement

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

Petitioner has prayed for following relief:-

(a) For issuance of appropriate writ in the nature of mandamus commanding and directing the respondent authorities to release the silver colour

Wagon R Car of the petitioner bearing Reg. No.BR29Q4720 seized by the Manjhi Police in connection with Manjhi Police Station Case No.336 of

2019 registered under Sections 30, 30(A) and 38(i) (ii) of Bihar Prohibition and Excise Act, 2016 in favour of the petitioner on his representative, the

vehicle in question has been seized with allegedly no recovery of wine the case is presently pending in the court of Addl. Sessions Judge-II, Saran.

(b) For the issuance of any other relief/reliefs to which the petitioner may be entitled to in the facts and circumstances of the present facts and

circumstances of the case in favour of the petitioner.â€

Informant is a police officer who in his written complaint has alleged that he received information that illicit liquor is being transported from UP to

Bihar in a vehicle, accordingly, he along with other police personnel reached said place and saw one oil tanker and a Wagon R are coming and on

search of both vehicles, illicit foreign liquor was recovered from the oil tanker and thereafter said vehicle and Wagon R which was accompanying the

oil tanker were seized for which FIR was lodged giving rise to Mamjhi P.S. Case No.336 of 2019 registered under Sections 30, 30(A) and 38(i)(ii) of

Bihar Prohibition and Excise Act, 2016.

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 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€

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.