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(2020) 09 PAT CK 0120

Patna High Court

Case No: Civil Writ Jurisdiction Case No. 6691 Of 2020

Suman Kumar Singh — APPELLANT

Vs

State Of Bihar And Ors — RESPONDENT

Date of Decision: Sept. 3, 2020

Acts Referred:

- Bihar Prohibition And Excise Act, 2016 - Section 13, 30(a), 32(2), 37(b)(c), 38(1), 41(1), 56, 58, 92, 93
- Indian Penal Code, 1860 - Section 34, 272, 273, 279, 427
- Code Of Criminal Procedure, 1973 - Section 340
- Constitution Of India, 1950 - Article 215

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

Bench: Division Bench

Advocate: Ranjan Kumar Jha, Kumar Manish

Final Decision: Disposed Of

Judgement

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

Petitioner has prayed for the following reliefs: -

â€œFor directing the respondent authorities to release Tiago (XT) vehicle bearing Registration No. JHO4T-5598,Chasisno.

MBT626282KKA01476,Engineno. REVTRNO2PRYKC3481 in favour of petitioner which has been seized in connection with Panjwara P.S. Case

no.21 of 2019 registered under sections 30 (a) and 32(2) of the Bihar Prohibition and Excise Act.

Learned counsel for the petitioner prays that the petition be disposed of in terms of order dated 9th January, 2020 passed in CWJC No. 20598 of 2019

titled as Md. Shaukat Ali Vs. The State of Bihar and subsequent order dated 14th January, 2020 passed in CWJC No.17165 of 2019 titled as Umesh

Sah Versus the State of Bihar & Ors. and order dated 29.01.2020 passed in CWJC No.2050 of 2020 titled as Bunilal Sah @ Munilal Sah.

Learned counsel for the respondents has no objection to the same.

The Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as the Act) prohibits the manufacture, storage, distribution, transportation,

possession, sale, purchase and consumption of any intoxicant or liquor, unless so allowed in terms of the Act. (Section 13).

In addition to the penalty imposed for committing such an offence, Section 56 of the Act lays down the procedure for confiscation of â€œthingsâ€

used for in the commission of such an offence. The said Section reads as under:

â€œ56. Things liable for confiscation.-Whenever an offence has been committed, which is punishable under this Act, following things shall be liable to

confiscation, namely-

(a) Any intoxicant, liquor, material, still, utensil, implement, apparatus in respect of or by means of which such offence has been committed;

(b) any intoxicant or liquor unlawfully imported, transported, manufactured, sold or brought along with or in addition to, any intoxicant, liable to

confiscation under clause (a);

(c) any receptacle, package, or covering in which anything liable to confiscation under clause (a) or clause (b), is found, and the other contents, if any,

of such receptacle, package or covering;

(d) any animal, vehicle, vessel or other conveyance used for carrying the same.

(e) Any premises or part thereof that may have been used for storing or manufacturing any liquor or intoxicant or for committing any other offence

under this Act.

Explanation.- The word â€œpremisesâ€ include the immovable structure, all moveable items within the structure and the land on which the premises is

situated.â€

Under section 58 power to issue an order of confiscation vests with the District Collector/Authorized officer, who upon receipt of the report of the

seizing officer detaining such property (â€œthingsâ€) is required to pass an order.

This Court has been flooded with several petitions solely on account of non-initiation of such proceedings of confiscation or passing of illegal orders

with respect thereto.

Also, on account of lack of parties pursing the remedies so provided under the Act.

Consequently, the court was faced with the following fact situations:- (a) where despite seizure, no proceedings for confiscation under Section 58

were initiated; (ii) where such proceedings were initiated but not concluded within a reasonable time; (c) the parties after obtaining interim relief for

release of â€œthingsâ€ under orders passed in different set of writ petitions, did not participate in the confiscatory proceedings; (d) where the order of

confiscation was neither communicated nor the parties made aware of such fact, thus precluding them from filing appeal under Section 92 and

Revision under Section 93 of the Act; (e) proceedings initiated under Section 92/93 were not concluded within a reasonable time either on account of

inaction on the part of the authority(s) or on account of non-cooperation of the private parties, be it for whatever reason.

Resultantly, this Court from time to time has been passing several orders.

In CWJC No.3245 of 2017 titled as Manish Kumar Chaudhary versus the State of Bihar & Ors., this Court vide order dated 18.01.20202 issued

following directions:

â€œAs such, as mutually prayed for, the present writ petition is being disposed of on the following mutually agreed terms:-

(a) Interim order dated 07.03.2017 passed in the instant writ petition, directing release of the property (vehicle/land/house/shop etc.) shall continue to

remain in operation till such time proceedings up to the stage of initiation of confiscatory proceedings and its culmination as also filing and culmination

of the proceedings in the appeal, as the case may be. This, however, would be subject to the petitioner(s) fully cooperating and not

transferring/alienating the property to any person or creating third party rights. It goes without saying that the property shall be maintained and retained

in its original condition and not destroyed in any manner or its character changed.

(b) Wherever proceedings for confiscation have not started, the Appropriate Authority constituted under the Act, shall positively initiate the same

within a period of four weeks from today. In any event, petitioner undertakes to appear in the office of the concerned appropriate authority/the

concerned District Magistrate, on the 10th of February, 2020 and apprise him of the passing of the order. The said Officer shall forthwith, and not

later than four weeks from today, initiate the proceedings and after compliance of principles of natural justice, take a decision thereupon within a

period of two months.

(c) In the event of the authority arriving at the conclusion, directing confiscation of the property, the petitioner shall positively file the appeal within the

statutory period as envisaged under Section 92 of the Bihar Prohibition and Excise Act, 2016 and the appellate authority shall positively decide the

same within a period of two months thereafter.

(d) Wherever confiscatory proceedings already stand concluded and if the petitioner so desires, within four weeks from today or within the statutory

period of limitation, as the case may be, positively file an appeal, which shall be adjudicated on its own merit. The issue of limitation shall not be raised

by the State or come in the petitionerâ€™s way of decision on merits. The said proceedings shall positively be concluded within a period of two

months from the date of filing.

(e) Petitioner undertakes to fully cooperate in all such proceedings (confiscatory, Appeal, etc.) and shall not take any unnecessary adjournment.

(f) Where appeal already stands filed, petitioner shall appear before the said Authority on the 20th February, 2020 and apprise him of the passing of

the order. The Appellate Authority shall positively decide the same within a period of two months thereafter.

(g) With the decision in the appeal, it shall be open for either of the parties to take recourse to such remedies as are available in accordance with law,

including approaching this Court, on the same and subsequent cause of action.

(h) If the petitioner fails to cooperate, does not join, or makes an endeavour of procrastination, in any one of the proceedings referred to supra, it shall

be open for the authority to take a decision with regard to the property (vehicle/house/land etc.), including taking back possession and putting it on sale

in terms of the Act, with the interim order deemed to have been vacated.

(i) If the appellant chooses not to prefer an appeal within the said statutory period or as directed herein, it shall be open for the authority to take a

decision with regard to the property, including taking back possession and putting it on sale in terms of the Act and the interim order passed in the

instant petition shall be deemed to have been vacated.

(j) With the outcome of the Special Leave Petition (C) No.29749 of 2016, titled as State of Bihar & Ors. etc. Vs. Confederation of Indian Alcoholic

Beverage Companies & Anr., parties, including the petitioner would be at liberty to take recourse to such remedies as are permissible in law.â€

In CWJC No.20598 of 2019 titled as Md. Shaukat Ali Vs. The State of Bihar & Ors. this Court vide order dated 09.01.2020 issued the following

directions: -

â€œWithout adjudicating the petitionerâ€™s petition on merits, we are of the considered view that interest of justice would be best met, if the petition

is disposed of in the following terms:-

(a) Since the vehicle in question stands seized in relation to the FIR which stood registered long ago, in case confiscation proceeding has not been

initiated, it must be initiated within a period of 15 days from today and that confiscation proceeding stands initiated, we direct the appropriate authority

under the Act to forthwith ensure that such proceedings be concluded not later than 30 days.

(b) The petitioner undertakes to make himself available in the office of the concerned appropriate authority empowered under Section 58 of the Act

i.e. District Collector, in his/her office on 24.01.2020 at 10:30 A.M.

(c) We further direct the appropriate authority to positively conclude the confiscation proceeding within next thirty days on appearance of the

petitioner. If for whatever reason, such proceeding cannot be concluded, in that event it shall be open for the authority to take such measures, as are

permissible in law, for release of the vehicle in question by way of interim measure, on such terms as may be deemed appropriate, considering the

attending facts and circumstances of the case.

(d) If eventually, the appropriate authority arrives at a conclusion that the property is not liable to be confiscated, it shall be open for the petitioner to

seek damages in accordance with law and have appropriate proceedings initiated against the erring officials/officers.

Learned counsel for the petitioner states that the certified copy of the order shall be made available to the concerned District Collector on the date so

fixed.

For future guidance, where parties have not approached this Court, we issue the following direction:-

The expression â€œreasonable delayâ€ used in Section 58 of Chapter VI of the Act, in our considered view, necessarily has to be within a reasonable

time and with dispatch, which period, in our considered view, three months time is sufficient enough for any authority to adjudicate any issue, more so,

when we are dealing with confiscatory proceedings.â€

These directions were reiterated in CWJC No.17165 of 2019 titled as Umesh Sah Versus The State of Bihar & Ors. by this Court vide order dated

14.01.2020.

Since the respondents had failed to comply with the several orders passed by this court, in CWJC No.2050 of 2020 titled as Bunilal Sah @ Munilal

Sah versus the State of Bihar & Ors. vide order dated 29.01.2020 by recording the entire history, directed the State to file an affidavit as to why

proceedings for contempt be not initiated. Such order dated 29.01.2020 in toto reads as under:-

â€œIt is seen that despite our order dated 9thof January, 2020, passed in C.W.J.C. No. 20598 of 2019, titled as Md. Shaukat Ali Vs. The State of

Bihar& Ors., and the order dated 14thof January, 2020 passed in C.W.J.C. No. 17165 of 2019, titled as Umesh Sah Vs. The State of Bihar& Ors.,

the State has not initiated proceedings under the provisions of the Bihar Prohibition and Excise Act, 2016. It is a matter of record that this legislation

has generated huge litigation. The docket of the Court, be it the trial court or the High Court, is now choked solely on account of such legislation. In

the High Court itself, on an average, 400 bail applications are being filed every day, some of which are pertaining to the said Statute. Position in the

lower courts is worse. Before the trial courts, i.e. the Sessions Courts, more than 1,75,000 challans stand filed in relation to the said Statute. Before

this Court, on an average, more than 5000 writ petitions are being filed annually for release of vehicles/properties seized under the said Act. It has

been the continued practice of this Court, since the year 2017, that in the writ petitions the vehicles, unless the situation so warrants, are normally

being released subject to fulfilment of certain conditions. This, perhaps, is done only to protect the property from being destroyed, for there is no

mechanism under the Statute or with the administration for protecting the property seized in relation to the crime registered under the said Statute.

Property is left to the vagaries of weather, resulting into national loss. This we say for the reason that proceedings for confiscation, as envisaged under

Section 58, were never initiated by the authority, which under the Act is the District Magistrate/Collector. It is only as a result of inaction on the part

of such authorities that the owners of the vehicles/properties are constrained to approach this Court for its release. When the matter in C.W.J.C. No.

20598 of 2019 (Md. Shaukat Ali Vs. The State of Bihar& Ors.) and in 17165 of 2019(Umesh Sah Vs. The State of Bihar& Ors.) (supra) was taken

up for hearing, the State vehemently opposed the release of the vehicle and, as such, the following orders were passed:

(in C.W.J.C. No.20598 of 2019, order dated 9.1.2020)

â€œThe petition filed on 01.10.2019 is listed for hearing for the first time today before the Court.

Heard learned counsel for the petitioner and learned counsel appearing on behalf of the State.

With the consent of the learned counsel for the parties, the writ petition stands disposed of in the following terms.

The petitioner prays for provisional release of Tata Indigo white vehicle bearing Registration No. BR 01CX 1796 which has been seized in connection

with Kotwali P. S. Case No. 721 of 2019, for the offences punishable under Sections 427/279 of the Indian Penal Code and Section 37(b)(c) of the

Bihar Prohibition and Excise Act, 2016.

It is continued practice of this Court that in cases of drunken driving; no recovery from the vehicle; recovery of less than commercial quantity; where

ex-facie, vehicle is not liable to be confiscated; where there is inordinate delay in initiating proceedings for confiscation of the vehicle etc., this Court

has been directing the State to provisionally release vehicle/property, subject to initiation/conclusion/finalisation of the confiscatory proceedings, as the

case may be. Reference can be made to the judgments/ orders passed by different co-ordinate Benches of this Court, viz:-

(i) Judgement dated 22.03.2018 passed in CWJC No.5049 of 2018, titled as Diwakar Kumar Singh versus The State of Bihar & Ors.;

(ii) order dated 31.07.2018 passed in CWJC No.13162 of 2018 titled as Rajesh Kumar Pandit @ Rajesh Pandit Vs. The State of Bihar & Ors.;

(iii) order dated 31.07.2018 passed in CWJC No.14242 of 2018 titled as Amar Kumar Vs. The State of Bihar & Ors.;

(iv) order dated 12.02.2018 passed in CWJC No.2437 of 2018 titled as Mahendra Manjhi Vs. The State of Bihar & Ors.;

(v) judgement dated 12.02.2018 passed in CWJC No.2470 of 2018 titled as Laxman Das @ Lakshman Ravidas Vs. The State of Bihar & Ors.;

(vi) order dated 11.09.2017 passed in CWJC No.13158 of 2017 titled as Sanjay Kumar Versus The State of Bihar & Ors.;

(vii) order dated 27.03.2018 passed in CWJC No.5528 of 2018 titled as Bikash Kumar Vs. The State of Bihar & Ors.;

(viii) order dated 27.03.2018 passed in CWJC No.5528 of 2018 titled as Bikash Kumar Versus The State of Bihar & Ors.;

(ix) order dated 01.05.2018 passed in CWJC No.7755 of 2018 titled as Anandi Prasad Versus The State of Bihar & Ors.;

(x) order dated 01.05.2018 passed in CWJC No.7644 of 2018 titled as Suraj Ram Versus The State of Bihar & Ors.;

(xi) order dated 07.08.2018 passed in CWJC No.15435 of 2018 titled as Kalesar Chaudhari Versus the State of Bihar & Ors.;

(xii) judgement dated 18.01.2019 passed in CWJC No.1215 of 2019 titled as Raushan Kumar @ Raushan Kumar Singh Versus The State of Bihar &

Ors.;

(xiii) judgement dated 29.01.2019 passed in CWJC No.1620 of 2019 titled as Asharfi Kumar @ Rakesh Kumar Versus the State of Bihar & Ors.;

(xiv) judgement dated 08.02.2019 passed in CWJC No.2380 of 2019 titled as Avinash Kumar Versus the State of Bihar & Ors.;

(xv) judgement dated 29.01.2019 passed in CWJC No.1648 of 2019 titled as Roshan Kumar Versus The State of Bihar & Ors.; and

(xvi) judgement dated 22.01.2019 passed in CWJC No.1314 of 2019 titled as Shanti Devi Versus The State of Bihar & Ors.

In fact, in CWJC No. 5049 of 2018 titled as Diwakar Kumar Singh Versus the State of Bihar & Ors. the Court issued the following directions:-

â€œThat apart, in the confiscation proceedings, the confiscating authority shall take note of the provisions of Section 56 of the Bihar Prohibition and

Excise Act, 2016 and record a positive finding after hearing the petitioner as to whether when the petitioner is found or the vehicle is found to be used

by a person in drunken condition and no liquor is seized from the vehicle or when the vehicle is not used for transportation of liquor, whether the

provision of Section 56 of the Act will apply. It shall be mandatory for the confiscating authority to decide this issue before passing any order on the

confiscation proceedings. The confiscating authority shall consider the provision of Section 56 of the Act, apply his mind and pass a speaking order

with regard to confiscation initiated. Without deciding the aforesaid issue as a preliminary issue, further proceedings in the confiscation proceedings

shall be prohibited.

We further request the office of the Advocate General to communicate this order to all the District Magistrates in the State of Bihar, who would be

mandated to pass an appropriate order in such cases where the vehicle has been confiscated under Section 56 of the Act only on the allegation that

the vehicle was being driven in a drunken condition and no liquor was seized from the vehicle nor the vehicle used for transportation or carriage of

liquor. The issue shall be decided by each and every District Magistrate before proceeding in the confiscation proceedings where the allegation is

about the vehicle being driven in a drunken condition and no liquor was found from the possession of the vehicle.

It shall be the duty of the Advocate General to communicate this order to each and every District Magistrate and inform the Registrar General of this

Court. In spite thereof, if we find that the District Magistrates are passing confiscation order without addressing this issue first, we may consider

initiating contempt proceedings against the concerned District Magistrate.â€

It is further seen that in CWJC No.15003 of 2019 titled as Shobha Devi Versus The State of Bihar & Ors. the Court observed as under:-

â€œ6. On examination of aforesaid fact, particularly allegation of the petitioner that in a court proceeding before the learned Special Judge, Excise, a

false information was given, we are of the opinion that the court of learned Special Judge, Excise would be competent court to pass an appropriate

order, in view of provisions contained in Section 340 of the Code of Criminal Procedure, 1973.

7. Accordingly, the petitioner is granted liberty to file appropriate petition before the learned Special Judge, Excise for prosecuting the concerned

police official.

8. So far as claim of compensation is concerned, obviously on going through the material on record, since there was no recovery of liquor from the

vehicle and it was a case, in which, the occupants of the vehicle were alleged to be in drunken condition and were creating nuisance, though were

liable to be arrested. In any event, the vehicle was not required to be seized, since it was not liable to be confiscated.

9. In such situation, we are of the opinion that it is a fit case, in which, we may direct to pay adequate compensation to the petitioner, being owner of

the vehicle, to the tune of Rs.75,000/- (seventy five thousand), however, Sri Kumar Manish, learned Standing Counsel â€" 5 requests for granting an

opportunity for obtaining detailed instruction and filing counter affidavit in the matter. The request of Sri Kumar Manish, S.C.-5 is allowed for filing

counter affidavit so that final order may be passed.

10. It goes without saying that before filing counter affidavit, the respondent no. 4/Superintendent of Police, Darbhanga may conduct a preliminary

inquiry regarding the conduct of the police officer, who had seized the vehicle of the petitioner and state all those facts in its counter affidavit, which

must be filed by 29th of November, 2019. The affidavit must be sworn by the Superintendent of Police himself.

11. It further goes without saying that if after considering all the facts, including counter affidavit, which is proposed to be filed, the Court comes to the

conclusion that the petitioner is entitled for claim of amount of compensation, which has been referred hereinabove, the said compensation amount

must be recovered from the pocket of the police officer, who was responsible for such illegal seizure.â€

Despite the same, only before this Court, when matters of similar nature came up for hearing on 16thof December, 2019, the learned Advocate

General assisted by Shri Vikash Kumar, learned Standing Counsel-11, and Shri Vivek Prasad, learned Government Pleader-7, vehemently opposed the

petitions for release of the vehicles. Consequently, the writ petitions were disposed of with the directions to the appropriate authorities to positively

initiate/conclude confiscatory proceedings within a period of 30-45 days.

Without adjudicating the petitionerâ€™s petition on merits, we are of the considered view that interest of justice would be best met, if the petition is

disposed of in the following terms:-

(a) Since the vehicle in question stands seized in relation to the FIR which stood registered long ago, in case confiscation proceeding has not been

initiated, it must be initiated within a period of 15 days from today and that confiscation proceeding stands initiated, we direct the appropriate authority

under the Act to forthwith ensure that such proceedings be concluded not later than 30 days.

(b) The petitioner undertakes to make himself available in the office of the concerned appropriate authority empowered under Section 58 of the Act

i.e. District Collector, in his/her office on 24.01.2020 at 10:30 A.M.

(c) We further direct the appropriate authority to positively conclude the confiscation proceeding within next thirty days on appearance of the

petitioner. If for whatever reason, such proceeding cannot be concluded, in that event it shall be open for the authority to take such measures, as are

permissible in law, for release of the vehicle in question by way of interim measure, on such terms as may be deemed appropriate, considering the

attending facts and circumstances of the case.

(d) If eventually, the appropriate authority arrives at a conclusion that the property is not liable to be confiscated, it shall be open for the petitioner to

seek damages in accordance with law and have appropriate proceedings initiated against the erring officials/officers.

Learned counsel for the petitioner states that the certified copy of the order shall be made available to the concerned District Collector on the date so

fixed.

For future guidance, where parties have not approached this Court, we issue the following direction:-

The expression â€œreasonable delayâ€ used in Section 58 of Chapter VI of the Act, in our considered view, necessarily has to be within a reasonable

time and with dispatch, which period, in our considered view, three months time is sufficient enough for any authority to adjudicate any issue, more so,

when we are dealing with confiscatory proceedings.

We clarify that we have not adjudicated the writ petition on merits and it shall be open for the parties to take all stand in the adjudicatory proceedings

and wherever parties are aggrieved, it shall be open to them to initiate appropriate proceeding before the appellate authority.

Learned counsel for the State also undertakes to communicate the order to the concerned appropriate authority i.e. District Magistrate, empowered

under Section 58 of the Act.â€

(In C.W.J.C. No. 17165 of 2019, order dated 14.1.2020)

â€œHeard learned counsel for the petitioner and learned counsel appearing on behalf of the State.

Learned counsel for the petitioner invites our attention to our earlier order dated 09.01.2020 passed in CWJC No. 20598 of 2019, titled as Md. Shaukat

Ali Vs. The State of Bihar& Ors., and wants the petition to be disposed of in terms thereof.

With the consent of the learned counsel for the parties, the writ petition stands disposed of in the following terms.

The petitioner prays for provisional release of Pick Up Van (Tata Motor/SFC-407 D-Van) bearing Registration No. BR-06G-4211 which has been

seized in connection with Taukauliya P.S.Case No. 709 of 2018 for the offences punishable under Sections 272, 273, 34 of the Indian Penal Code and

Sections 30(a), 38(1), 41(1)of the Bihar Prohibition and Excise Act, 2016.

It is continued practice of this Court that in cases of drunken driving; no recovery from the vehicle; recovery of less than commercial quantity; where

ex-facie, vehicle is not liable to be confiscated; where there is inordinate delay in initiating proceedings for confiscation of the vehicle etc., this Court

has been directing the State to provisionally release vehicle/property, subject to initiation/conclusion/finalisation of the confiscatory proceedings, as the

case may be. Reference can be made to the judgments/ orders passed by different co-ordinate Benches of this Court, viz:-

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(xii) judgement dated 18.01.2019 passed in CWJC No.1215 of 2019 titled as Raushan Kumar @ Raushan Kumar Singh Versus The State of Bihar &

Ors.;

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(xv) judgement dated 29.01.2019 passed in CWJC No.1648 of 2019 titled as Roshan Kumar Versus The State of Bihar & Ors.; and

(xvi) judgement dated 22.01.2019 passed in CWJC No.1314 of 2019 titled as Shanti Devi Versus The State of Bihar & Ors.

In fact, in CWJC No. 5049 of 2018 titled as Diwakar Kumar Singh Versus the State of Bihar & Ors. the Court issued the following directions:-

â€œThat apart, in the confiscation proceedings, the confiscating authority shall take note of the provisions of Section 56 of the Bihar Prohibition and

Excise Act, 2016 and record a positive finding after hearing the petitioner as to whether when the petitioner is found or the vehicle is found to be used

by a person in drunken condition and no liquor is seized from the vehicle or when the vehicle is not used for transportation of liquor, whether the

provision of Section 56 of the Act will apply. It shall be mandatory for the confiscating authority to decide this issue before passing any order on the

confiscation proceedings. The confiscating authority shall consider the provision of Section 56 of the Act, apply his mind and pass a speaking order

with regard to confiscation initiated. Without deciding the aforesaid issue as a preliminary issue, further proceedings in the confiscation proceedings

shall be prohibited.

We further request the office of the Advocate General to communicate this order to all the District Magistrates in the State of Bihar, who would be

mandated to pass an appropriate order in such cases where the vehicle has been confiscated under Section 56 of the Act only on the allegation that

the vehicle was being driven in a drunken condition and no liquor was seized from the vehicle nor the vehicle used for transportation or carriage of

liquor. The issue shall be decided by each and every District Magistrate before proceeding in the confiscation proceedings where the allegation is

about the vehicle being driven in a drunken condition and no liquor was found from the possession of the vehicle.

It shall be the duty of the Advocate General to communicate this order to each and every District Magistrate and inform the Registrar General of this

Court. In spite thereof, if we find that the District Magistrates are passing confiscation order without addressing this issue first, we may consider

initiating contempt proceedings against the concerned District Magistrate.â€

It is further seen that in CWJC No.15003 of 2019 titled as Shobha Devi Versus The State of Bihar & Ors.the Court observed as under:-

â€œ6. On examination of aforesaid fact, particularly allegation of the petitioner that in a court proceeding before the learned Special Judge, Excise, a

false information was given, we are of the opinion that the court of learned Special Judge, Excise would be competent court to pass an appropriate

order, in view of provisions contained in Section 340 of the Code of Criminal Procedure, 1973.

7. Accordingly, the petitioner is granted liberty to file appropriate petition before the learned Special Judge, Excise for prosecuting the concerned

police official.

8. So far as claim of compensation is concerned, obviously on going through the material on record, since there was no recovery of liquor from the

vehicle and it was a case, in which, the occupants of the vehicle were alleged to be in drunken condition and were creating nuisance, though were

liable to be arrested. In any event, the vehicle was not required to be seized, since it was not liable to be confiscated.

9. In such situation, we are of the opinion that it is a fit case, in which, we may direct to pay adequate compensation to the petitioner, being owner of

the vehicle, to the tune of Rs.75,000/- (seventy five thousand), however, Sri Kumar Manish, learned Standing Counsel â€" 5 requests for granting an

opportunity for obtaining detailed instruction and filing counter affidavit in the matter. The request of Sri Kumar Manish, S.C.-5 is allowed for filing

counter affidavit so that final order may be passed.

10. It goes without saying that before filing counter affidavit, the respondent no. 4/Superintendent of Police, Darbhanga may conduct a preliminary

inquiry regarding the conduct of the police officer, who had seized the vehicle of the petitioner and state all those facts in its counter affidavit, which

must be filed by 29th of November, 2019. The affidavit must be sworn by the Superintendent of Police himself.

11. It further goes without saying that if after considering all the facts, including counter affidavit, which is proposed to be filed, the Court comes to the

conclusion that the petitioner is entitled for claim of amount of compensation, which has been referred hereinabove, the said compensation amount

must be recovered from the pocket of the police officer, who was responsible for such illegal seizure.â€

Despite the same, only before this Court, when matters of similar nature came up for hearing on 16thof December, 2019, the learned Advocate

General assisted by Shri Vikash Kumar, learned Standing Counsel-11, and Shri Vivek Prasad, learned Government Pleader-7, vehemently opposed the

petitions for release of the vehicles. Consequently, the writ petitions were disposed of with the directions to the appropriate authorities to positively

initiate/conclude confiscatory proceedings within a period of 30-45 days.

Without adjudicating the petitionerâ€™s petition on merits, we are of the considered view that interest of justice would be best met, if the petition is

disposed of in the following terms:-

(a) Since the vehicle in question stands seized in relation to the FIR which stood registered long ago, in case confiscation proceeding has not been

initiated, it must be initiated within a period of 15 days from today and that confiscation proceeding stands initiated, we direct the appropriate authority

under the Act to forthwith ensure that such proceedings be concluded not later than 30 days.

(b) The petitioner undertakes to make himself available in the office of the concerned appropriate authority empowered under Section 58 of the Act

i.e. District Collector, in his/her office on 04.02.2020 at 10:30 A.M.

(c) We further direct the appropriate authority to positively conclude the confiscation proceeding within next thirty days on appearance of the

petitioner. If for whatever reason, such proceeding cannot be concluded, in that event it shall be open for the authority to take such measures, as are

permissible in law, for release of the vehicle in question by way of interim measure, on such terms as may be deemed appropriate, considering the

attending facts and circumstances of the case.

(d) If eventually, the appropriate authority arrives at a conclusion that the property is not liable to be confiscated, it shall be open for the petitioner to

seek damages in accordance with law and have appropriate proceedings initiated against the erring officials/officers.

Learned counsel for the petitioner states that the certified copy of the order shall be made available to the concerned District Collector on the date so

fixed.

For future guidance, where parties have not approached this Court, we issue the following direction:-

The expression â€œreasonable delayâ€ used in Section 58 of Chapter VI of the Act, in our considered view, necessarily has to be within a reasonable

time and with dispatch, which period, in our considered view, three months time is sufficient enough for any authority to adjudicate any issue, more so,

when we are dealing with confiscatory proceedings.

We clarify that we have not adjudicated the writ petition on merits and it shall be open for the parties to take all stand in the adjudicatory proceedings

and wherever parties are aggrieved, it shall be open to them to initiate appropriate proceeding before the appellate authority.

Learned counsel for the State also undertakes to communicate the order to the concerned appropriate authority i.e. District Magistrate, empowered

under Section 58 of the Act.â€

In Umesh Sah (supra), this Court had clarified that the expression â€œreasonable delayâ€ under Section 58 of Chapter 6 of the Act has to be

construed to be â€˜not more than three monthsâ€™.

It is seen that despite our observations, the appropriate authorities have not taken any action in initiating the proceedings for confiscation of the

property under the Act. The litigants are, thus, forced to approach this Court by way of filing separate petitions.

Thus, today we are left with two options; either to initiate proceedings for contempt under the provisions of Contempt of Courts Act or under Article

215 of the Constitution of India or ask the Chief Secretary, Government of Bihar, to evolve a mechanism, self serving in nature, so as to ensure that

the provisions of the Act are implemented in letter and spirit, expeditiously, without any delay and with reasonable dispatch.

Why is it that the owners of the property are forced to approach this Court for release of the vehicles or property? Is it that there is no mechanism

under the Act for initiating confiscatory proceedings at the earliest? Is it that there is insufficient infrastructure with the State Government for ensuring

implementation of the provisions of the Act?

Illustratively, in the weekly list dated 27.1.2020, we notice that more than 75 cases stand filed and listed despite our order dated 9th of January, 2020.

In the instant case, seizure is of the year 2019 and no proceedings of confiscation have commenced.

We are of the considered view that non-implementation of the Act is generally having a very serious adverse consequence on the dispensation of

administration of justice. And, peculiarly, it is only when the matter was taken up by the Bench hearing the petition bearing C.W.J.C. No. 25266 of

2019 (Vikki Kumar Vs. The State of Bihar& Ors.) on 17.12.2019that the State vehemently opposed release of the vehicle, contrary to the practice

adopted hitherto before.

Be that as it may, at this point in time, we refrain from passing any order under the contempt jurisdiction, but direct the Chief Secretary, Government

of Bihar, to file his personal affidavit dealing with each one of the issues highlighted (supra) as also elaborately indicating the mechanism which the

State has or desires to evolve so as to prevent the litigants from directly approaching the Court for release of the vehicle and also ensuring early

completion of the proceedings, be it confiscatory in nature or in an appellate jurisdiction, under the provisions of the Bihar Prohibition and Excise Act,

2016.

Let an affidavit in that regard be positively filed within one week.

List this case on 6.2.2020.â€

Further this very Bench in CWJC No.6148 of 2020, titled as Vishal Kumar Versus the State of Bihar & Anr on 04.06.2020 issued the following

directions: -

â€œIn the aforesaid decisions, we have already laid down the time-schedule within which all proceedings are necessarily required to be concluded and

the outer limit is three months from the date on which this Court has directed the party to make himself available before the appropriate authority.

We clarify that petitioner undertakes to fully cooperate in the proceedings and we further clarify that in case the authorities are not able to conclude

the proceedings within the time bound period, the vehicle/property shall be allowed to be released on such conditions as the appropriate authority may

deem fit and proper.

As such, petition is disposed of making the directions contained in the orders referred to supra, applicable mutatis mutandis, insofar as applicable and

possible, to the petitionerâ€™s case.â€

Learned counsel states that petition be disposed of in terms of the various orders passed by this Court, more so the orders referred to supra.

It is seen that till date, in large number of cases, position about conclusion of the proceedings, be it under Section 58, 92 or 93 remains the same.

We further direct that all proceedings under Section 58 must positively be initiated/concluded within a period of ninety days from the date of

appearance of the parties. Further, Appeal/Revision, if any, be also decided within a period of thirty days from the date of initiation, failing which the

â€œthingsâ€ (vehicle/property/ etc.) shall be deemed to have been released in terms of several orders passed by this Court, reference whereof stands

mentioned in Bunilal Sah @ Munilal Sah (supra).

Wherever confiscatory proceedings stand concluded and parties could not file the appeal/revision within the statutory period of limitation, as already

stands directed in several matters, if they were to initiate such proceedings within next thirty days, the plea of limitation would not come in their way of

adjudication of such proceedings on merit.

Petitioner through learned counsel undertakes to make himself/herself available on 28th September, 2020 at 10:30 A.M. before the appropriate

authority which may be in the attending facts, the Collector of the Banka District/Appellate or the Revisional Authority. If the Collector is not himself

dealing with the matter on account of delegation of power or assignment of work to another officer of his District, he shall fix a date directing the

parties to appear before the said officer, which date shall be not exceeding one week. Also, he shall inform the said authority of fixing of such date.

We clarify that convenience of parties, specially during the time of Pandemic Covid-19 is of prime importance and it shall be open for the authority to

hear the parties with the use of technology, i.e. Video Conferencing facility etc.

Learned counsel for the State undertakes to communicate the order to all concerned, including the District Magistrate and no certified copy of the

order shall be required to be placed on the file of proceedings pending or initiated under the Act, for such order is available on the official website of

the High Court & can be downloaded and/or verified from there, in the times of current Pandemic Covid-19.

We only hope and expect that the Authorities under the Act shall take appropriate action at the earliest and in accordance with law, within the time

schedule fixed, failing which the vehicle/property/things liable for confiscation shall be deemed to have been released without any further reference to

this Court.

Liberty reserved to the petitioner to take recourse to such remedies as are otherwise available in accordance with law if the need so arises

subsequently.

Petition stands disposed of with the aforesaid observations/directions.