
Vijay Das Vs State Of Bihar And Ors

Civil Writ Jurisdiction Case No. 7383 Of 2020

Court: Patna High Court

Date of Decision: Sept. 21, 2020

Acts Referred:

Bihar Prohibition And Excise (Amendment) Act, 2018 " Section 30(a), 30(d), 32

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

Bench: Division Bench

Advocate: Ajay Mukherjee, Ganesh Sharma, Vivek Prasad

Final Decision: Allowed

Judgement

Heard the parties.

Petitioner has prayed for following reliefs:-

(i) For a direction upon the respondents, particularly respondent nos.3 to 5 to release the Mahindra Tractor bearing Reg. No. BR51G5170, Chassis

No.MBNABAEPKJA04316, Engine No.NKA2EMJ0373 along with teller in favour of the petitioner which was seized in connection with Banka P.S.

Case No.703 of 2019 registered under Section 30(a), 30(d), 32 of Bihar Prohibition and Excise (Amendment) Act, 2018.

(ii) Any other relief/reliefs as the petitioner may found entitled by this Hon'ble Court be given.

Informant is a police officer who in his written complaint has alleged that on 01.01.2019 while he was on patrolling duty along with other police

personnel, he received a confidential information that Muneshwar Yadav is loading Mahua flower on a tractor in front of his house which was to be

sent for preparation of Mahua wine and on receiving said information, he reached the place and on seeing the police, persons assembled there tried to

flee away, however, Muneshwar Yadav, Moti Das and Manoj Kumar Das were apprehended and Mahua flower packed in 13 sacks each containing

50 kg. was recovered and Mahua flower along with tractor was seized for which FIR was instituted giving rise to Banka P.S. Case No.703 of

2019 registered under Section 30(a), 30(d), 32 of Bihar Prohibition and Excise (Amendment) Act, 2018.

Division Bench of this Court in C.W.J.C. No. 23163 of 2018 (Umesh Kumar @ Umesh Mahto versus The State of Bihar and Ors. and other

analogues matters) has held as follows:-

“Since the Mahua Flowers Rules allows any person to remain in possession of Mahua Flowers to the extent of 5 kg. without any licence

and any quantity in excess thereof, is to be done under a licence, the quantity possessed by the respective petitioners in excess of 5 kg., without a

licence, may be a statutory violation and thus capable of retention by the State Government but in absence of any penal action so provided under

the Rules or the Act for possession of these flowers exceeding the limit, even if the State Government would be within its jurisdiction to

retain the same, the confiscation proceedings cannot be allowed to continue.

In result, we hold that the confiscation proceedings, if any, initiated against the petitioners for alleged violation of Section 3 of the Mahua Flowers

Rules read alongside the provisions of the Act for possession of Mahua Flowers exceeding 5 kgs., is without sanction of law and

consequently the confiscation proceeding, if any, initiated against the petitioners shall stand quashed and the vehicles seized, if not already released,

shall be released in favour of the owner on production of ownership papers.”

In view of Division Bench judgment as referred above, the seized tractor is directed to be released forthwith and confiscation case to be dropped.

However, 650 kg. seized Mahua flower cannot be released and same to be destroyed as per prescribed procedure.

The writ petition is allowed.