

(2021) 01 PAT CK 0206

Patna High Court

Case No: Civil Writ Jurisdiction Case No. 10485 Of 2020

Surendar Prasad And Anr

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision: Jan. 22, 2021**Acts Referred:**

- Indian Penal Code, 1860 - Section 272, 273
- Bihar Prohibition And Excise Act, 2016 - Section 30(a), 58, 92, 93

Hon'ble Judges: Sanjay Karol, CJ; Prabhat Kumar Singh, J**Bench:** Division Bench**Advocate:** Vijay Kumar Sinha, Vivek Prasad**Final Decision:** Disposed Of

Judgement

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

Petitioner has prayed for the following reliefs: -

For issuance of an appropriate writ/writs/order/orders commanding /directing the respondents to release the Hero Honda Plus Motorcycle bearing

Registration No. BR01CX-6604 and Hero Honda Plus Motorcycle bearing Registration No. BR01CN- 6561 in favour of the petitioner which have

been seized by the police officer of Kankarbagh Police Station in connection with Kankarbagh P.S. Case No. 467 of 2020 for the offence under

Section 272/273 IPC and 30(a) of the Bihar Prohibition and Excise Act, 2016 pending before the Court of learned Special Judge, Excise, Patna.

Learned counsel for the petitioner prays that the petition be disposed of in terms of the judgment dated 22.12.2020, passed in Civil Writ Jurisdiction

Case No.9592 of 2020 (Dharmendra Mahto versus The State of Bihar).

In the case of Dharmendra Mahto (supra) this Court has referred and discussed all the previous case laws on the subject. Some of the judgments rendered in similar matters are as under:-

(i) Md. Shaukat Ali Vs. The State of Bihar & Ors., reported in 2020(3) PLJR 927.

(ii) Umesh Sah Versus The State of Bihar & Ors., reported in 2020(3) PLJR 931.

(iii) Bunilal Sah @ Munilal Sah Vs. The State of Bihar & Ors., reported in 2020(3) PLJR 935.

The operating part of the judgment in the case of Md. Shaukat Ali are being briefly reproduced as under:-

“(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 "reasonable delay" 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."

The aforesaid directions were reiterated in the case of Umesh Sah (supra). Once again in the case of Bunilal Sah @ Munilal Sah (supra) this Court dealt in detail the various provisions of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as the Excise Act or the Act of 2016).

In the recent judgment rendered by this Court in the case of Dharmendra Mahto (supra) this Court has issued further directions:-

"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

"things" (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."

We find that the direction issued by this Court in the aforementioned cases are equally applicable in the facts of the present case. The

F.I.R./prosecution report was lodged/filed on 29.06.2020, the vehicle was seized. Confiscation proceeding has not been initiated as yet. Because of the

delay in initiation of confiscation proceeding, the vehicle is losing its road worthiness and the depreciation in the re-sale value of the vehicle is an

ultimate loss to the State.

Petitioner through learned counsel undertakes to make himself/herself available on 09.02.2021 at 10:30 A.M. before the appropriate authority which may be in the attending facts, the Collector of the Patna District. If the Collector is not himself/herself dealing with the matter on account of delegation of power or assignment of work to another officer of his/her District, he/she shall fix a date directing the parties to appear before the said officer, which date shall be not exceeding one week. Also, he/she shall inform the said authority of fixing of such date. On appearance of the petitioner through his/her learned Advocate, the appropriate authority shall consider passing any order/interim order, as the case may be, in terms of the direction of this Court.

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.

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.