

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9517 of 2023

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Amarjeet Yadav, Son of Braj Kishore Yadav, Resident of Village- Mangalpur,
P.O.- Shyampur, P.S.- Mahammadpur, District- Gopalganj.

... .. Petitioner/s

Versus

1. The State of Bihar Through Addl. Chief Secretary-Cum-Principal Secretary,
Department of Prohibition and Excise, Govt. of Bihar, New Secretariate, Patna.
2. The Excise Commissioner, Department of Prohibition and Excise, Govt. of
Bihar, New Secretariate, Patna
3. The Collector- Cum- District Magistrate, Gopalganj.
4. The Sub Divisional Magistrate, Gopalganj.
5. The Superintendent of Police, Gopalganj.
6. The Superintendent of Excise, Gopalganj.
7. The Officer-in-Charge, Kuchaikot Police Station, Dist- Gopalganj.

...Respondent/s

Bihar Prohibition and Excise Act, 2016 – Section 30(a), 56(1), 32, 47, 56, 57B, 58, 61, 92, 93, 95 – Bihar Prohibition and Excise Rules, 2021 – Rr. 12 – A, 13 – A – Petitioner vehicle was seized – No vehicle can be seized or confiscated without its use in commission of any offence under the Act, 2016 – use of vehicle in transport of illicit liquor/intoxicant is sine-qua-non for its seizure and confiscation – use of vehicle to carry intoxicant or liquor is also not sufficient for its seizure and confiscation – involvement or connivance of the owner of vehicle in such illegal use of vehicle is also sine qua non for confiscation of vehicle or imposing any penalty for release of vehicle – where vehicle has been stolen or robbed by criminal to carry intoxicant or liquor – owner of the vehicle cannot be punished by seizure and confiscation of vehicle – unless the owner of the vehicle is an accused in the case, the court cannot hold that the owner of vehicle is directly or indirectly involved in the prohibited use of the vehicle – it is not a case of the police that the illicit liquor was kept concealed in any part of the vehicle in question to carry it – it would be erroneous to hold that the vehicle was used to carry the contraband – word “use” cannot be interpreted liberally giving expansive meaning – rather it has to be interpreted strictly – petitioner/owner is not an accused and his vehicle in question has been already held not to have been used in carrying the illicit liquor – twin prerequisites for seizure and confiscation of a vehicle under the Act, 2016 (i) use of vehicle in carrying/transporting the liquor or intoxicant – (ii) the consent or connivance of the owner of vehicle in commission of the offence are not fulfilled – person found in illegal possession of the illicit liquor liable to be prosecuted for the offence punishable under the Act – impugned order is arbitrary and hit by the Article 14 of the Constitution of India, and also violative of Constitutional right of the petitioner to hold property in Article 300A of the Constitution of India – the seizure and confiscation of the vehicle in question is without any authority of law – Confiscation order quashed – District Collector was directed to release the vehicle in question; and also directed to pay Rs. 50,000/- towards compensation.

(Paras 22, 23, 25, 28, 27, 29, 30 and 31)

2022 (6) BLJ 540 – Referred to

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6. The Superintendent of Excise, Gopalganj.
7. The Officer-in-Charge, Kuchaikot Police Station, Dist- Gopalganj.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dhramveer, Advocate
For the Respondent/s : Mr. Vikash Kumar, SC-11

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE JITENDRA KUMAR
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE JITENDRA KUMAR)

Date : 30.01.2024

The present writ petition has been filed by the
petitioner seeking following reliefs:-

“ It is, therefore, prayed that Your Lordship may
graciously be pleased to admit this Writ application, Issue
notice calling upon the Respondents call for the records of
the case and after hearing the parties be pleased to quash/
set aside the Impugned Order dt. 13.04.2023, passed by
Learned Addl. Chief Secretary- Cum- Principal Secretary,
Department of Prohibition & Excise, Govt. of Bihar,



passed in Excise Revision No. 13 of 2023, and further be pleased to stay the operation of order dated 12.01.2023, passed by Learned S.D.M. Gopalganj, passed in Sub Divisional Confiscation Case No. 822 of 2022 (Annexure-03).

And/Or

Be Pleased to pass such other order/orders as may deem fit and proper in the facts and circumstances of the case.

AND

Further be pleased to release the seized/ confiscated Motorcycle of the petitioner bearing Reg. No. BR28Z-8562 during pendency of this application.”

2. The relevant facts, as emerging from the record, are that on written report of Shailendra Kumar Pappu, Kuchaikot P.S. Case No. 438 of 2022 was registered on 28.09.2022 for offence punishable under Section 30(a) of Bihar Prohibition and Excise Act, 2016 against five accused persons, namely, Sunil Kumar Rai, Kunal Rai, Deepak Kumar, Abhiranjan Kumar and owner of Scorpio vehicle bearing Reg. No. AS-09A-3885. As per the written report, on 28.09.2022 the informant along with police party proceeded for evening patrolling and at 18.30 Hrs he reached near village- Bhathawa Roop Pacchi Road More. In the meantime, two persons in Appache motorcycle were seen coming with big Jhola with some article. On seeing police party, Scorpio vehicle which was behind two persons were sitting in the vehicle, were stopped and motorcycle turn back and tried to flee in which driver of Scorpio



and both motorcycle rider were apprehended. One person in Scorpio jumped in water and succeeded in fleeing. On inquiry, the driver of Scorpio disclosed his name as Sunil Kumar Rai and the name of fled away person as Kunal Rai. Apprehended persons of Appache motorcycle disclosed their names as Deepak Kumar and Abhiranjan Kumar. Thereafter, in presence of two independent witnesses, search was made, then from Scorpio vehicle bearing Reg. No. AS-09A-3885 cartoons of 8 PM foreign liquor of 180 ml. in which 48 piece in each cartoon, total 432 piece, quantity 77.760 litre was recovered. From driver Sunil Kumr Rai one screen touch mobile of Oppo Company with Sim Nos. 7079268233 and 8873104126 was recovered. Then from one big jhola lying on the seat of Appache motorcycle bearing Reg. No. BR-28Z-8562, one cartoon of 8 PM of 180 ml., in which 48 piece quantity 8.640 litre was recovered. Thereafter, seizure list was prepared. On further inquiry, all the three apprehended persons disclosed that they had purchased the liquor from Uttar Pradesh and loaded on Scorpio and motorcycle and were carrying it.

3. Subsequently, the confiscation proceeding bearing Confiscation (Excise) Case No. 1158 of 2022 was initiated by District Magistrate-cum-Collector, Gopalganj.



However, the same was subsequently transferred to Ld. Sub Divisional Magistrate, Gopalganj and the same was numbered as Confiscation (Excise) Case No. 822 of 2022. Ld. Sub Divisional Magistrate, Gopalganj vide order dated 12.01.2023 passed in Confiscation (Excise) Case No. 822 of 2022 confiscated the vehicle in question holding that it was used in transportation of illicit liquor and hence, it was liable to be confiscated under Section 56 (d) of Bihar Prohibition and Excise Act, 2016 and the vehicle was also directed to be sold in public auction and the sale proceed was directed to be deposited in the State Treasury.

4. The aforesaid order dated 12.01.2023 passed by Ld. Sub Divisional Magistrate, Gopalganj in Confiscation (Excise) Case No. 822 of 2022 was impugned by the petitioner in Excise Appeal bearing No. 12 of 2023 before Excise Commissioner, Patna. However, the appellate authority upheld the order of the confiscation authority. This appellate order was again challenged by the petitioner before revisional authority in Excise Revision No. 13 of 2023 before Ld. Additional Chief Secretary-cum-Principal Secretary, Department of Bihar Prohibition & Excise, Patna. The appellate order was also upheld and allowed Sub-Divisional Magistrate, Gopalganj to



proceed with auction in the confiscation proceeding as per the Act. Revisional authority held that the revisionist has failed to rebut the mandatory presumption under Section 32 of Bihar Prohibition and Excise Act, 2016, so raised against the owner of the vehicle in question and no satisfactory explanation was given by the revisionist as to how the seized liquor was found in the vehicle in question. It was also held that since it is admitted fact that total 8.64 litre of Indian made foreign liquor was recovered, the police has rightly instituted prosecution under Section 30(a) of the Act and was correct in recommending for confiscation and public auction proceeding as per the provisions of the Act.

5. Ld. Counsel for the Petitioner submits that the impugned order has been passed by the Confiscating Authority without any authority of law and in violation of Article 300 A of the Constitution. He further submits that for seizure and confiscation of any vehicle under the Bihar Prohibition and Excise Act, 2016, the vehicle is required to be used in commission of any offence under the Act with involvement of the owner of the vehicle. He refers to Sections 56, 57B, and 58 of the Act and Rule 12A and Rule 13A of the Bihar Prohibition and Excise Rules 2021. He further submits that as per the



Prosecution case itself, 8.64 liter illicit liquor was recovered from the pillion rider of the motorcycle from his bag kept in his hand. It was not recovered from the dickey or any part of the motorcycle. In such situation, it does not lie in the mouth of the Respondents to say that the motorcycle was used in illegal possession of the liquor by the accused or the motorcycle was used to carry the contraband.

6. Ld. Counsel for the Petitioner further submits that the owner of the vehicle, who is Petitioner herein, is also no way involved in the alleged offence, because even as per the prosecution case, he was neither driving the motorcycle nor was sitting on the motorcycle. As such, the vehicle has been seized and confiscated by the authorities without any authority of law.

7. *Per contra*, Ld. Counsel for the Respondents defends the impugned order submitting that as per the facts and circumstances of the case and the provisions of the Act, the vehicle in question is liable to be seized and confiscated.

8. In view of the aforesaid facts and circumstances and rival submission of the parties, the legal question arise for consideration by this Court is whether the vehicle in question is liable to be seized and confiscated under Bihar Prohibition and



Excise Act, 2016.

9. Before we consider the rival submission of the parties, it would be imperative to refer to the relevant statutory provisions and case laws:-

10. Sections 32, 47, 56, 57B, 58, 60, 61, 92, 93, 95 of the Bihar Prohibition and Excise Act, 2016 and the Bihar Prohibition and Excise Rules, 2021 are relevant statutory provisions in the aforesaid facts and circumstances.

11. Section 32 deals with presumption of offence in certain cases. It reads as follows:-

“32. Presumption as to commission of offence in certain cases.-

(1) In prosecution of an offence under this Act, the accused person would have to account for the possession of any liquor, intoxicant, material, utensil, implement or apparatus involved in manufacture or storage of such liquor.

(2) In the event of a failure to offer a satisfactory explanation, there shall be a presumption that the accused person is guilty of the commission of such offence, unless proved otherwise.

(3) Where any equipment, machinery, animal, vessel, cart, vehicle, conveyance or any premises are used in the commission of an offence under this Act, and are liable to confiscation and/or liable to be sealed, the owner or occupier thereof would need to account satisfactorily, and in the absence of a satisfactory explanation the presumption that accused person committed the offence shall arise, unless proved otherwise.”

12. Section 47 provides for liability of the person who is under control of the vehicle knowingly permits it to be used for commission by any other persons of an offence



punishable under provision of the Excise Act to punishment in the same manner as if he had himself committed the said offence. It reads as follows:-

“47. Penalty for allowing premises, etc., to be used for commission of an offence:- Whoever, whether being a licensee under this Act or otherwise, and having the control or use of any house, room, enclosure, space, animal or conveyance, knowingly permits it to be used for commission by any other person of an offence punishable under any provision of this Act, shall be punishable in the same manner as if he had himself committed the said offence.”

13. Section 56 of the Act provides for liability of seized vehicles, amongst other seized items, for confiscation. It reads as follows:-

“56. Confiscation of Seized Items:- Notwithstanding anything contained in Section 57B, whenever an offence punishable under this Act, is committed, the Collector or an officer authorized by him may confiscate such items based on the report of the investigating officer.

- (2) Such items may include -
- (i) any premises or part thereof;
 - (ii) any animal, vehicle, vessel or conveyance;
 - (iii) any liquor or intoxicant;
 - (iv) any other item having bearing with the case;

Provided, where things as mentioned in Section 57 are to be destroyed, then the Collector or an officer authorized by him need not confiscate the same before their destruction.

(3) The State Government may issue necessary direction, guidelines, regulations and instructions with respect to the mode and manner of search, seizure, destruction and confiscation.”

14. Section 57B as inserted in 2022, by way of amendment, provides that any vehicle used for committing any



offence punishable under the Prohibition and Excise Act and having been seized by any police officer or Excise Officer may be released by the Collector upon payment of such penalty as may be notified by the State Government. This Section reads as follows:-

“57B. Things or premises liable to be released upon penalty.”(1) Any animal, vehicle, vessel or other conveyance used for committing any offence punishable under this Act that has been seized by any police Officer or Excise Officer may be released by the Collector upon payment of such penalty as may be notified by the State Government.

(2) Any premises or part thereof used for committing any offence punishable under this Act that has been seized by any police Officer or Excise Officer may be released by the Collector upon payment of such penalty as may be notified by the State Government.

(3) If the person concerned does not pay the penalty, then the Collector shall proceed to confiscate the said animal, vehicle, vessel or other conveyance and premises as per section-58.

Explanation 1.- It shall not be a right of the accused to get his conveyance, item or premises released upon payment of the required penalty. The Collector, based upon a report by a police officer or an excise officer, may, for reasons to be recorded in writing, still refuse to release the said conveyance, item or premises and proceed ahead with confiscation and auction/destruction.

Explanation 2.-The Collector shall, from the date of this Amendment coming into force, close the on-going confiscation proceedings if the person concerned pays the penalty as notified and release such vehicle, conveyance or premises.

Explanation 3.-Such release shall not affect the outcome of trial, if any before the Special Court.”

(Emphasis supplied)

15. Section 58 of the Act provides for the procedure and conditions for confiscation of the vehicle or conveyance and



other things by District Collector or Officer authorized by him. As per Sub-section 1 of Section 58, the officer seizing the vehicle is required to report to the District Collector without any reasonable delay and as per Sub-Section 2 if the Collector is satisfied, as per the report, that an offence under this act has been committed, he is authorized to confiscate the vehicle, but, as per Sub-section 3, only after giving reasonable opportunity to the person concerned for hearing. Section 58 reads as follows:-

“58. Confiscation by District Collector.-(1)

Notwithstanding anything Contained in this Act or any other law for the time being in force, where anything liable for confiscation under this Act is seized or detained under the provisions of this Act, the officer seizing and detaining such property shall, without any reasonable delay submit a report to the District Collector who has jurisdiction over the said area;

(2) On receipt of the report under sub-section (1), the District Collector if satisfied that an offence under this Act has been committed, may, whether or not prosecution is instituted for the commission of such an offence and whether or not a case is pending before any court, order confiscation of such property;

(3) The Collector shall, before passing an order under sub-section (2), give a reasonable opportunity to the person concerned, of being heard;

(4) While making an order of confiscation under sub-section (2), the District Collector may also order that such of the properties which the order of confiscation relates, which in his opinion cannot be preserved or are not fit for human consumption, be destroyed. Whenever any confiscated article has to be destroyed in conformity with these provisions, it shall be destroyed in the presence of a Executive Magistrate or officer ordering the confiscation or forfeiture, as the case may be, or in the presence of the Excise Officer not below the rank of a Sub-Inspector;

(5) While making an order of confiscation under sub-section (2), if the District Collector is of the opinion that it is expedient in the public interest to do so, he may order the said property or any part thereof to be sold by public



auction or dispose of departmentally and proceeds deposited with the State Government,
(6) The District Collector shall submit a full report of all particulars of confiscation to the Commissioner of Excise within one month of such confiscation.”

(Emphasis supplied)

16. Section 61 provides that when an order for confiscation of any property, which includes vehicle also, has been passed under section 58 of the Bihar Prohibition and Excise Act, 2016 and such order has become final, the property gets vested in the State Government free from any encumbrance.

Section 61 reads as follows:-

“61. Confiscated articles to vest with the Collector.-
When an order for confiscation of any property has been passed under Section 58 and such order has become final in respect of the whole or any portion of such property, such property or portion thereof, as the case may be, shall vest with the State Government free from any encumbrance.”

17. Section 92 provides for departmental appeal against the final orders passed by the authorities under the Act. The order passed by Excise Officer, lower in rank than District Collector, is appealable to District Collector within 60 days, order passed by District Collector is appealable to Excise Commissioner and order passed by Excise Commissioner is appealable to the State Government within 90 days. However, no second appeal is provided against an order passed by Excise Commissioner. Section 92 reads as follows:-



“92. Appeals.-(1) All final orders passed by any Excise Officer other than the Excise Commissioner or Collector under this Act, shall be appealable to the Collector within sixty days from the date of the order.

(2) All final orders passed by the Collector and Excise Commissioner shall be appealable to the Excise Commissioner and the State Government respectively within ninety days from the date of the order complained of. Provided that no second appeal shall lie against an order passed by the Excise Commissioner on appeal.

(3) The State Government may make rules in this behalf.”

18. Section 93 provides for departmental revision. The revisional power has been vested with the State Government.

Section 93 reads as follows:-

“93. Revision.- The State Government may, on its own motion or on an application made to it, call for and examine the records of any proceeding before any excise officer or any document, including that relating to renewal or refusal of license or grant of permit, pass etc. under this act, for the purpose of satisfying itself as to the correctness and legality of any order passed in, and as to regularity of any such proceeding and may, when calling for such record, direct that the order be not given effect till the pendency of the examination of the record, so called for. After examining the record, the State Government may annul, reverse, modify or confirm such order, or pass such other order as it may deem fit.”

19. Under Section 95 of the Bihar Prohibition and Excise Act, 2016, the Bihar Government is empowered to make rules to carry out the purposes of the Act. Bihar Prohibition and Excise Rules, 2021 has been made by Bihar Government under Section 95 of the Act. Rule 12A, as inserted in 2022 by way of amendment, provides for release of vehicle, conveyance etc. on payment of penalty. This Rule reads as follows:-

“12A. Release of Vehicles, Conveyance etc. on



Payment of Penalty.- (1) If any vehicles, conveyance, vessel, animal etc. has been seized by any police or excise officer under the Act, then in terms of Section 57B (1) of the Act, the Collector or an officer authorized by him upon receipt of an application in Form IV by the owner of the said conveyance or vehicle etc., may release the said conveyance or vehicle upon payment of such penalty as may be ordered by the Collector or the officer authorized by him.

Provided, where it is not possible to ascertain the owner of the vehicle or the owner is not coming to claim the vehicle, the Collector or the officer authorized by him, after waiting for 15 days from the date of seizure, shall proceed to confiscate and auction the vehicle as per the provisions of the Act.

(2) The amount of penalty shall be as decided by the Collector or the Officer authorized by him. While imposing the penalty, he shall have due regard to the quantity of intoxicant recovered, involvement of the vehicle owner and the latest insurance value of the vehicle. In no case, the penalty should be less than 10% of the insured value of the vehicle and more than Rs. 5 lakhs. The insured value is the value of the vehicle as assessed by the insurance company. Where, the insured value is not available or the Collector or the Officer authorized by him has reason to believe that the vehicle is undervalued, he shall get the valuation done by the District Transport Officer. In any case, the Collector shall not wait beyond 15 days from the date of seizure and if during this period, the accused/owner does not pay up the penalty, he shall proceed with the confiscation/auction."

(3) Notwithstanding above, if on a report by police officer or excise officer, the Collector or the officer authorized by him is satisfied that releasing the vehicle or conveyance shall not be in the public interest, he shall proceed ahead with the confiscation of the said vehicle or conveyance and its subsequent auction/disposal.

(4) Where the conveyance is such that its valuation/insurance is not possible, the Collector or the officer authorized by him shall impose such fine as he deems fit. While imposing such fine, the Collector or the officer authorized by him shall have due regard to the economic status of the individual, nature of his involvement in the crime and the quantum of intoxicant recovered.

(5) Such penalty shall be, regardless of the outcome of the trial if any, before the Special Court, non-refundable.

(6) The owner of the vehicle/conveyance shall, after the



release of the vehicle/conveyance, produce the vehicle/conveyance as and when required by the authorities.

Explanation. In all pending/ongoing cases of confiscation/auction of vehicles, the Collector or the officer authorized by him may give an opportunity to the existing owner to pay the aforesaid penalty and get the vehicle released. Upon satisfaction about ownership and upon payment of such penalty, the ongoing confiscation/auction proceeding may be dropped and the vehicle released.”

(Emphasis supplied)

20. Rule 13A of the Bihar Prohibition and Excise Rules

2021 as inserted in 2022 by way of amendment provides for the procedure of confiscation of vehicle etc. It reads as follows:

“13A. **Procedure of confiscation of vehicle/conveyance etc.**-(1) Where it is decided by the Collector that the vehicle is not to be released on penalty or where the owner does not pay the required penalty, the confiscation proceeding shall be initiated. The proposal for confiscation of the conveyance shall be sent the police/excise officer to the Collector (or an officer authorized by him) within 30 days from the date of seizure. The officer concerned shall immediately start the confiscation proceeding.

In case of delay of beyond 30 days, in submission of the proposal for confiscation, the police/excise officer will have to explain the delay.

(2) The officer concerned, on receipt of proposal for confiscation of any vehicle(s) or other conveyances from police/excise officer, shall issue show cause notice to owner of the said vehicle or the vessel or other conveyance. Simultaneously, he shall issue notice to the District Transport Officer and the Chemical Examiner for their reports.

(3) Such notice issued by the officer shall be served as per procedure prescribed in the Code of Criminal Procedure, 1973 for service of summons. He shall obtain report from the District Transport Officer or any authority authorized for the purpose of registration of the conveyance and the report of chemical examiner within 30 days of seizure.

(4) The officer shall provide reasonable



opportunity of hearing to the owner. The investigating/inquiry officer shall also be given opportunity to participate in such hearing.

(5) If, on the date fixed for hearing, the person(s) to whom the notice has validly been served fail(s) to appear in the proceeding on two consecutive dates fixed for hearing, the confiscating authority shall proceed to pass the order ex-parte.

6) The officer, after hearing the parties, on satisfaction that an offence has been committed in terms of the Act, shall pass appropriate order with respect to seized vehicle or vessel or conveyance as the case may be.

7. The officer shall ensure that the order for confiscation is pass within 90 days from the date of seizure of the vehicle.

8. Any person aggrieved by the order passed by the Collector under the provisions of the Act may file appeal in the manner prescribed under these rules.”

(Emphasis supplied)

21. The bare reading of **Section 57B(1)** of the Act clearly provides that any vehicle, or other conveyance used for committing any offence punishable under the Act and seized may be released upon payment of penalty. **Rule 12-A(2)** of the Bihar Prohibition and Excise Rules, 2021 also provides that while imposing penalty under **Section 57-B** of the Act, the authority concerned is required to give due regard to the involvement of the vehicle owner. **Section 58(3)** of the Act read with **Rule 13-A(4)** of Bihar Prohibition and Excise Rules, 2021 provides that during confiscation proceeding, the owner of the vehicle has to be given opportunity of hearing and as per Rule 13 A (6), after hearing, if the Officer concerned is satisfied that offence in terms of the Act has been committed,



he can pass appropriate order in regard to the vehicle.

22. The first and foremost thing, which emerges from the aforesaid discussion of the statutory provisions, is that no vehicle can be seized or confiscated without its use in commission of any offence under the Bihar Prohibition and Excise Act, 2016. Under Section 30 of the Act, transport of illicit liquor or intoxicant is an offence and in commission of such offence, a vehicle can be used. As such, use of the vehicle in transport of illicit liquor/intoxicant is *sine qua non* for its seizure and confiscation. It also emerges that just use of the vehicle to carry intoxicant or liquor is also not sufficient for its seizure and confiscation. The involvement or connivance of the owner of the vehicle in such illegal use of the vehicle is also *sine qua non* for confiscation of the vehicle or imposing any penalty for release of the vehicle. Such view has been consistently expressed by this Court in various judicial pronouncements under writ jurisdiction.

23. In **Mohammad Basim Akram vs. State of Bihar [2022 (6) BLJ 540]** the driver of a vehicle was found to be carrying some quantity of intoxicant or liquor in the vehicle for his personal consumption without any knowledge of the owner of the vehicle, **this court** held that the vehicle could not be construed of having indulged in transportation of illicit liquor.



The facts of the case was that 8.8 litre illicit liquor was recovered from the cabin of the driver and driver had confessed that he had purchased the contraband for his personal consumption and kept in the cabin.

24. Similarly, there may be a situation where a vehicle has been stolen or robbed by criminal to carry intoxicant or liquor. In such situation also, it cannot be contended that there was involvement or connivance of the owner in commission of the offence under the Act. For such illegal use of the vehicle, the owner of the vehicle cannot be punished by seizure and confiscation of the vehicle.

25. There is also possibility of a situation where in a public transport, a passenger may be carrying some contraband in his clothes or small carry-bag without any knowledge of the owner of vehicle or conductor or driver of the vehicle. In such situation also, the vehicle cannot be said to be used for conveying the contraband and hence, it cannot be liable to be seized and confiscated. Such situation may happen even in a train where passengers may be carrying small bag with contraband. It does not mean that the train was used for conveyance of the contraband.

26. It is relevant to point out that in case of direct



involvement of the owner of the vehicle in prohibited use of the vehicle, he is made accused in the criminal case registered by the police. Even in case of his indirect involvement by way of permission for or connivance in use of his vehicle in commission of the offence, he is liable to be accused under Section 47 of the Act. As such, unless the owner of the vehicle is an accused in the case, the court can not hold that the owner of the vehicle is directly or indirectly involved in the prohibited use of the vehicle.

27. Coming to the case at hand we find that in regard to the motorcycle in question the police has alleged that on 28.09.2022, he saw two persons coming on the motorcycle with a big jhola (bag) containing some article. After stopping the motorcycle, both the driver and the pillion rider were apprehended and the bag which the pillion rider was carrying was searched and 8.64 litre liquor was recovered from the bag. It is not a case of the police that the illicit liquor was kept or concealed in any part of the motorcycle in question to carry it. In such situation, it would be erroneous to hold that the motorcycle was used to carry the contraband. The word “use” cannot be interpreted liberally giving expansive meaning. It has to be interpreted strictly as it has Penal consequences. Even the



object and scheme of the Bihar Prohibition and Excise Act does not warrant expansive interpretation.

28. Moreover the petitioner/owner was not found riding the vehicle, nor is any allegation against him in regard to involvement in the alleged offence as he is not accused in the case. Moreover presumption under Section 32(3) of the Act against the owner of the vehicle arises only when the owner is an accused and his vehicle is held to be used in carrying the contraband and not otherwise. But the petitioner / owner is not an accused and his vehicle in question has been already held not to have been used in carrying the illicit liquor.

29. In view of the aforesaid facts and circumstances of the case, we find that the twin prerequisites for seizure and confiscation of a vehicle under the Bihar Prohibition and Excise Act, 2016 – use of the vehicle in carrying / transporting the liquor or intoxicant and the consent or connivance of the owner of the vehicle in commission of the offence - are not fulfilled. Consequently the vehicle in question is not liable to be seized and confiscated under the Act. However, the persons who were found in illegal possession of the illicit liquor are liable to be prosecuted for the offence punishable under the Act.

30. Hence the impugned order is arbitrary and hit by



Article 14 of the Constitution. It is also violative of Constitutional right of the petitioner to hold property as provided in Article 300A of the Constitution, which prohibits any deprivation of property without authority of law. The Bihar Prohibition and Excise Act no way authorises the official to seize or confiscate the motorcycle in the alleged facts and circumstances of the case. Hence, the seizure and confiscation of the motorcycle in question is without any authority of law. The confiscation order, is accordingly liable to be quashed. The petitioner, whose constitutional right to property has been violated, is entitled to adequate compensation. He is also entitled to compensation on account of expenditure and harassment in course of forced litigations.

31. Hence, the Impugned Order dt. 13.04.2023, passed by Learned Addl. Chief Secretary- Cum- Principal Secretary, Department of Prohibition & Excise, Govt. of Bihar, passed in Excise Revision No. 13 of 2023, is quashed and the District Collector, Gopalganj is directed to release the motorcycle in question forthwith. He is also directed to pay Rs. 50,000/- (Rupees Fifty thousand only) to the Petitioner towards compensation. The payment of the compensation must be made within **ten (10) days** of the receipt of the order.



32. The petition is allowed, accordingly.

(Jitendra Kumar, J.)

I agree.

(P. B. Bajanthri, J.)

Ravishankar/S.
Ali/Chandan-

AFR/NAFR	AFR
CAV DATE	27.07.2023
Uploading Date	30.01.2024
Transmission Date	

