IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17645 of 2019

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Popali Devi, Wife of Ranjeet Choudhary, Resident of Upar Bazar Aliganj, P.S. Chandradeep, District-Jamui

... ... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Excise, Govt. of Bihar, Patna
2. The District Magistrate, Jamui.
3. The Superintendent of Excise, District-Jamui
4. The Superintendent of Police, Jamui.
5. The S.H.O. Chandradeep, District-Jamui.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr.Satya Prakash Parasar, Adv.
For the Respondent/s : Mr.Vivek Prasad, GP-7

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
and
HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

Date : 17-12-2019

None appears on behalf of the petitioner. However, learned counsel for the respondents is present.

Through the present writ application, the petitioner has prayed for unsealing the house of the petitioner which has been seized in connection with Chandradeep P.S. Case No. 71 of 2016 registered for the offences punishable under Sections 272, 273 of the I.P.C. and Section 47 of the Bihar Prohibition and Excise Act, 2016. Further prayer has been made for quashing the order dated 26.04.2019, passed by the Collector, Jamui, in

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Confiscation Case No.38 of 2016. Relief prayed for in paragraph 1 of the writ application reads as follows:

> "1. That this Civil writ application is being filed for following relief/reliefs :
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> (i) For issuance of writ/writs in nature mandamus/certiorari for unsealing of dwelling house of the petitioner which has been seized in connection with Chandradeep P.S. Case No.71 of 2016, which was instituted for the offences punishable under Sections 272/273 of the I.P.C. and Section 47 of the Bihar Prohibition and Excise Act presently pending in the Court of District Magistrate-cum-Collector, Jamui.
>
> (ii) For quashing of Confiscation Case No. 38 of 2016 in which final order has been passed by learned Collector, Jamui on 26.04.2019 without having any jurisdiction for the same.
>
> (iii) For any other relief/reliefs for which this Hon'ble Court deem fit and proper."

The prosecution case got initiated on the basis of written report of Vishesh Kumar, Sub-Inspector of Police submitted to the S.H.O.- Chandradeep Police Station is to the effect that on 12.08.2016, the informant after having received information that the petitioner Popali Devi resides separately with her husband is indulged in the trade of illicit liquor, raided the house of petitioner and from there, 6 litres of country made

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liquor were recovered. Consequently, the FIR has been lodged under Section 272, 273 of the I.P.C. and Section 47(a) of the Bihar Prohibition and Excise Act, 2016, as amended by Amendment Act 8 of 2018 (hereinafter referred to as 'the Act').

Learned counsel for the State submits that the final order in confiscation proceeding has been passed and the motorcycle in question has already been confiscated and against the final order of confiscation, appeal lies under Section 92 of the Act. Hence, we are of the view that the order has been passed by the Collector in consonance to the provision under Section 58(2) of the Act.

Considering the fact that the final order has been passed in the confiscation proceeding and the Act provides an alternative efficacious remedy of appeal in Chapter IX under Section 92(2) of the Act against the order passed by the Collector before the Excise Commissioner within ninety days of the order complained of, this Court is not inclined to interfere in the matter.

It is well settled that the discretionary jurisdiction under Article 226 of the Constitution of India being a self-imposed restriction can only be exercised when the writ Petition has been filed for the enforcement of any of the Fundamental rights or

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where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. The Apex Court in the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Ors., reported in (1998) 8 Supreme Court Cases 1 has held as follows:

> "15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bare in at least three contingencies, namely, where the Writ Petition has been filed for the enforcement of any of the Fundamental rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case law on this point but to cut down this circle of forensic whirlpool, we would rely or some old decisions of the evolutionary era of the constitutional law as they still hold the field."

Accordingly, this writ application is disposed of with

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a liberty to the petitioner to prefer appeal within a period of four weeks along with an application for condonation of delay. If such appeal is filed by the petitioner, the appellate authority is expected to consider application for condonation of delay in view of the fact that the writ application of the petitioner was pending before this Court and dispose of the appeal within a period of ten weeks from the date of its filing.

Needless to say, in case the vehicle in question has not been auction sold till date, it will not be put on auction sale till the disposal of appeal before the appellate authority, if so filed.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

Ashwini/-

AFR/NAFR	NAFR
CAV DATE	NIL
Uploading Date	20.12.2019
Transmission Date	NIL

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