

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7262 of 2023

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Ramprakash Paswan, Son of Late Kalpu Paswan, R/o Village Daffarpur, p.S.-
Nawkothe, District- Begusarai.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Excise,
Government of Excise, Government of Bihar, Patna.
2. The Additional Chief Secretary-cum-Principal Secretary, Registration and
Excise Department, Patna, Bihar.
3. The Appellate Authority-cum-Excise Commissioner, State Excise
Department, Bihar, Patna.
4. The District Magistrate-cum-Collector, Kishanganj.
5. The Superintendent of Police, Begusarai.
6. The Excise Superintendent, Kishanganj.
7. The SHO, Town, Begusarai.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Shambhu Narayan Singh, 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 ARUN KUMAR JHA
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE ARUN KUMAR JHA)

Date : 24-11-2023

Learned counsels for the respective parties have been
heard on the last date of hearing.

2. The petitioner has filed the instant writ petition
seeking the following reliefs :-

*“(I) For issuance of an appropriate Writ in
nature of mandamus for quashing of order dated
13.08.2022 passed in confiscation case No.
480/2022 and consequential order dated*



19.12.2022 passed in Excise Appeal case No. 519/2022 and order dated 09.02.2023 passed in Excise Revision Case No. 04/2023.

ii. For the issuance of appropriate writ/order direction or writ in the nature of mandamus commanding the respondents to release the vehicle of the petitioner since the same is rotting in police station premises and is subject of decay.

iii. For the issuance of appropriate writ/order direction to the respondents authorities that during the pendency of instant application the process of auction of said vehicle of the petitioner be stayed.

iv. For grant of any other relief or reliefs to which the petitioner be found entitled in the law be granted to them.”

3. Briefly stated, the case of the petitioner is as follows:

The petitioner is registered owner of Mahindra Scorpio vehicle bearing Registration No. BR-09PA-3316, Engine No. TDJ4M89824 and Chassis No. MA1TA2TDKJ2M16641, and as per prosecution case, during checking of vehicles, one Mahindra Scorpio bearing registration No. BR07PB-5068 was chased and intercepted by the police, but the driver of the vehicle fled away taking advantage of darkness. From the said vehicle, recovery of total 117 liters of India made foreign liquor was made for which Kishanganj Special Case No. 140/2022 arising out of Excise Case bearing PR. No. 60/2022 dated 17.02.2022 was registered under Section



30 (a) of the Bihar Prohibition & Excise Act against the owner-cum-driver of the vehicle.

4. Further case of the petitioner is that prior to institution of Excise Case bearing PR. No. 60/2022 dated 17.02.2022, the vehicle of the petitioner bearing registration No. BR-O9PA-3316 with aforesaid description was stolen by some unknown person from Begusarai and for that Town P.S (Begusarai) case No. 62/2022 dated 24.01.2022 has been registered against unknown person.

5. Further case of the petitioner is that on 07.05.2022 Excise Officials of Kishanganj District informed the petitioner that his vehicle was recovered in connection with Special Case No. 140/2022 arising out of Excise Case bearing PR. No. 60/2022 dated 17.02.2022. Thereafter, the petitioner went to Excise Office, Kishanganj where Excise Officials informed the petitioner that the registration number of the vehicle was found changed at the time of seizure but after verification of Engine and Chassis number, it came to light that the said vehicle belonged to the petitioner. Thereafter, the petitioner filed an application before the District Magistrate-cum-Collector, Kishanganj on 10.06.2022 along with all relevant documents for release of his vehicle, but no action has been taken by the



District Magistrate-cum-Collector, Kishanganj on the said application.

6. Further case of the petitioner is that the petitioner filed an application in the court of learned Chief Judicial Magistrate, Begusarai in connection with Town P.S (Begusarai) case No. 62/2022 for a direction to the concerned SHO to release the vehicle of the petitioner bearing registration No. BR-09-PA-3316, but the said application was rejected vide order dated 23.07.2022 by the court of learned Chief Judicial Magistrate, Begusarai.

7. Further case of the petitioner is that thereafter petitioner came to know about the proposal for confiscation sent to District Magistrate, Kishanganj by the Excise Officials and also about the confiscation proceeding bearing Confiscation Case No. 480/2022 which was initiated in the matter. Thereafter, on 06.08.2022, the petitioner filed an application in the confiscation proceeding stating therein that a writ petition was filed before this Court for release of vehicle and the petitioner also prayed to stay the confiscation proceeding, but despite the said application, the District Magistrate, Kishanganj proceeded with confiscation case No. 480/2022 and passed a final order dated 13.08.2022 confiscating the vehicle of the petitioner.



8. Further case of the petitioner is that on 13.08.2022, the learned counsel for the petitioner did not appear before the District Magistrate, Kishanganj due to his personal reasons and on the very same day, the final order had been passed in his absence or the petitioner has no knowledge regarding the order dated 13.08.2022 passed by District Magistrate, Kishanganj. In this circumstance, without having knowledge of the said order dated 13.08.2022, the petitioner could not communicate the information regarding the said order to the conducting lawyer of the writ petition pending before this Court.

9. Further case of the petitioner is that due to lack of knowledge of the order dated 13.08.2022 passed by the District Magistrate, Kishanganj, the petitioner proceeded with writ petition bearing CWJC No. 11678/2022 in which this Court passed a judgment dated 02.09.2022 by which this Court directed the District Collector/ Confiscating Authority to release the vehicle in question of the petitioner within a period of 15 days and after getting this judgment, the petitioner approached the District Magistrate, Kishanganj and filed an application dated 13.09.2022 along with the copy of judgment dated 02.09.2022. Thereafter, confiscation case No. 480/2022 was reopened and the same was heard on four dates and on the final



date of hearing i.e., 15.10.2022, the said petition of the petitioner was disposed of with an observation that "it seems the matter has been suppressed before the Hon'ble High Court and this court has no direction to review the case". However, the petitioner submitted that this very observation shows the arbitrariness of District Magistrate, Kishanganj that despite the fact that the petitioner had already filed the petition dated 06.08.2022 before District Magistrate, Kishanganj in confiscation case No. 480/2022 wherein it has been clearly stated that a writ petition was filed in this Court and the petitioner prayed to stall the confiscation proceeding and the same has also been admitted by District Magistrate, Kishanganj vide order dated 13.08.2022.

10. Further the case of the petitioner is that the petitioner filed Excise Appeal Case No. 519/2022 before the respondent No. 03 against the order dated 13.08.2022 passed in Confiscation Case No. 480/2022, but vide order dated 19.12.2022, the respondent No. 03 affirmed the order of respondent No. 04 in connection with Confiscation Case No.480/2022. Thereafter, the petitioner filed Excise Revision Case No.4/2023 against the order dated 19.12.2022 passed in Excise Appeal Case No. 519/2022, but vide order dated



09.02.2023, respondent no. 02 affirmed the orders of respondent Nos. 3 and 4.

11. Aggrieved by the aforesaid orders, the petitioner has come before this Court by filing the present Writ.

12. The learned counsel appearing on behalf of the petitioner submitted that from bare perusal of the prosecution report, it is evident that the name of the petitioner transpired in the present case only for the reason that he is the owner of the vehicle from which the alleged recovery has been made. The learned counsel further submitted that the petitioner is the owner of the seized vehicle, which was stolen by unknown persons on 24.01.2022 for which he lodged Begusarai Town P.S. Case No.62 of 2022 for the offence punishable under Section 379 of the Indian Penal Code and the same was being used by the miscreants for transportation of illicit liquor and 117 liters of illicit liquor was recovered from the said vehicle. The learned counsel further submitted that the petitioner has nothing to do with the seized foreign liquor and nothing incriminating has been recovered from the conscious possession of the petitioner. There is not an iota of evidence which could suggest that the petitioner was facilitating the culprits or providing access for transporting of incriminating articles either directly or indirectly.



He has not contravened Section 30 of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as 'the Act') and for this reason his vehicle was not liable to be confiscated under Section 56 of the Act. The learned counsel further submitted that the petitioner has no knowledge about illegal liquor being carried through his vehicle. The learned counsel further submitted that the impugned orders of the confiscating, appellate and the revisional authorities have passed without the application of mind and in absence of any iota of material information against the petitioner. Therefore, the actions of the authorities are arbitrary, unreasonable and shows complete non-application of mind. Thus, the learned counsel submitted that the instant writ petition may be allowed and the relief sought by the petitioner may be granted to him.

13. Per contra, the learned counsel for the respondents submitted that the on the report dated 03.03.2022 of the Excise Superintendent, Kishanganj, confiscation case no.219 of 2022 was initiated against unknown persons in connection with the seized vehicle bearing registration no. BR-07PB-5068. Thereafter, the confiscating authority passed an order dated 07.06.2022 in connection with confiscation case no.219 of 2022 confiscating the said vehicle. The learned counsel further



submitted that at the time of seizure of the vehicle, the registration number bearing BR-07PB-5068 was mentioned on the number plate of the vehicle. Upon verification of the seized vehicle by the District Transport Officer, Kishanganj, it was found that the actual registration number of the seized vehicle is BR-09PA-3316. Thereafter, the Excise Superintendent, Kishanganj again submitted a report dated 24.06.2022 to initiate the confiscation proceeding in connection with seized vehicle bearing registration no. BR-09PA-3316. On the basis of aforesaid report, a confiscation case no.480 of 2022 was initiated. However, the petitioner failed to prove his case despite opportunity being given. Thereafter, the District Magistrate-cum-Collector, Kishanganj passed the order dated 13.08.2022 confiscating the vehicle of the petitioner. The learned counsel further submitted that the subject matter of vehicle was auctioned on 10.02.2023 to one Md. Seraj in terms of order dated 13.08.2022 of the confiscating authority. The learned counsel further submitted that there is no infirmity in the impugned orders of the respondent authorities. Section 56 of the Act makes it amply clear that 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 and such items may include any animal, vehicle, vessel or conveyance. Thus, the learned counsel submitted that there is no merit in the instant writ petition and the same be dismissed.

14. Perused the records.

15. Before advertng to the case, certain provisions of law need to be considered.

Sections 56, 58 of the Act and Rules 12A, 13A and 14 of the Bihar Prohibition and Excise Rules, 2021 read as under :

“56. Confiscation of Seized Items.- (1) 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.

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 subsection (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.

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 penalty shall be 50% of the latest



insured value of vehicle/conveyance. 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 and 50% of that value shall be the amount of penalty.

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.

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 by 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 passed 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.

14. Auction or Destruction of Seized/Confiscated items: - *The items seized/confiscated by the Collector or any officer authorized by him may be disposed of by him, either by auction or by destruction, in the following manner: -*

(1) If the Collector or the officer authorized by him, is satisfied that any seized article, is liable to speedy and natural decay or is of trifling value or can be put to misuse or endangering public safety or occupying public



space, he may, in exercise or power under Section-57 and Section-57A of the Act, order for destruction of the same at any time before passing the order of confiscation. The Collector or the officer concerned shall ensure that any seized liquor should not be allowed to remain stored for a very long time. He shall ensure that the said liquor is destroyed within 15 days of its seizure after having obtained the report of the chemist.

(2) The confiscated animal/ vehicle/ vessel/ other conveyance premises or part thereof shall be put to public auction and sold to the highest bidder within a period of one month from the date of attainment of finality of order of the confiscating authority or such extended period as deemed fit by the Collector/authorized officer or may be put government use in the manner prescribed.

(3) Before the auction, the Collector or the officer may cause the valuation of the vehicle/conveyance/premises. He shall then invite bid through public advertisement in at least one local/vernacular newspaper. Where he does not receive any offer for a particular item in the first attempt of auction, he may invite bids again. If, after three such attempts, he does not receive any bid, he may dispose of the said vehicle/conveyance on an "as is where is" basis regardless of the valuation".

16. Having considered the material available on record and further considering the rival submissions, it is evident that



the petitioner has questioned the validity of confiscation proceedings, appeal and revision. The petitioner, who is stated to be the owner of the subject matter of vehicle, had registered an FIR bearing Begusarai Town P.S. Case No.62 of 2022 on 24.01.2022 against unknown persons for theft of his vehicle. Thereafter, on 17.02.2022, Special Case No.140 of 2022 arising out of Excise Case No.60 of 2022 under the Excise Act came to be registered in the district of Kishanganj. The proposal for confiscation was sent to the Collector, Kishanganj vide letter no.1760 dated 24.06.2022 by the Superintendent, Excise, Kishanganj. In this backdrop, confiscation proceedings, appeal and revision were proceeded and in all the proceedings, the petitioner has suffered vide orders dated 13.08.2022, 19.12.2022 and 09.02.2023, respectively. Further, the subject matter of vehicle is stated to have been auctioned on 10.02.2023. The concerned Regional Transport Authority or Staff were stated to have assessed the value of the subject matter of motor vehicle at Rs.4,00,000/-. However, the vehicle has been purchased by the auction purchaser at Rs.6,26,000/-.

17. This Court vide order dated 11.10.2023 directed the concerned authority to remain present on the next date of hearing and to apprise this Court with reference to depreciated



value of the motor vehicle and its insured value in respect of subject matter of vehicle or any other vehicle of the same model of 2019. Further as it was learnt that after stealing the subject matter of motor vehicle, the vehicle number has been fabricated and a different number plate was installed. On this issue, this Court directed the concerned authority to apprise this Court whether any FIR was registered in the jurisdictional police station?

18. Pursuant to the aforesaid order dated 11.10.2023, Mr. Arun Kumar, the District Transport Officer, Kishanganj and Mr. Pankaj Kumar, Motor Vehicle Inspector appeared before the Court. They submitted that the vehicle bearing registration no.BR-07PB-5068 has been manufactured in the year 2018 and its sale amount was Rs.6,76,611/-. A methodology of depreciation of 10% per year in the rate of aforesaid vehicle, the valuation was calculated for the year 2022 at Rs.4,43,923. In the spot verification, the condition of the vehicle was not found to be satisfactory and pursuant to the direction issued by the Additional Chief Secretary, Department of Prohibition, Excise and Registration, Bihar, Patna vide its letter no.6966 dated 02.12.2021 for realistic valuation of vehicle rather than the market rate because the purpose of auction of vehicle is not for



collecting revenue rather purpose is for collection of fine as penalty. They further submitted that after considering the aforementioned facts, valuation of the vehicle in question was determined as Rs.4,00,000/-. However, they submitted that recently the valuation of another Scorpio vehicle bearing registration no.BR-11PB-7473 manufactured in the year 2019 has been done for Rs.5,00,000/-.

19. *Prima facie*, it appears from perusal of the prosecution report that though the vehicle owned by the petitioner may be involved in transportation of illicit liquor, apparently involvement of the petitioner is not forthcoming from the facts and circumstances of the case.

20. Further, there is no material on record to suggest that the petitioner was facilitating and helping the culprits for transportation of incriminating articles. Further, the petitioner has not contravened Section 30 of the Act either directly or indirectly.

21. Analogy can be drawn with the decision of this Court vide judgment dated **14.09.2023** passed in ***CWJC No.17894 of 2022 (Sunita Sinha vs. The State of Bihar and Ors.)*** wherein we have deprecated the tendency of the authorities to confiscate the premises found involved in trade of



illicit liquor in an arbitrary manner and putting unreasonable terms and conditions for its release and we further pointed out the lacunae in the relevant provisions of law regarding seizure, sealing and confiscation of premises.

22. Coming back to the facts of the present case, undisputedly, the subject matter of vehicle of the petitioner was stolen for which an FIR has already been registered by the petitioner against unknown. Further, the proposal for initiation of confiscation of the vehicle of the petitioner was sent on 24.06.2022, i.e., after much delay though it was supposed to be sent within 30 days. The earlier intimation sent on 03.03.2022 was against a fabricated registration number and the same goes on to show the utterly negligent approach of the authorities as they did not even bother to check the engine number and chassis number of the vehicle. Apart from that, the authorities did not make any effort to register a case/FIR for fabrication of the registration number of seized vehicle.

23. It is also very surprising that the valuation was done on the basis of a fictitious registration number, i.e., BR-07PB-5068 and not for the actual registration number, i.e., BR-09PA-3316. It shows gross negligence of the authorities. Further communication brought on record which is letter no.812 dated



28.10.2023 from the office of the District Transport Officer, Kishanganj and addressed to learned Standing Counsel No.11 shows even in letter no.1743 dated 22.06.2022 of the Superintendent, Excise and Prohibition mentioned the registration number of the vehicle as BR-07PB-5068 which means the authorities were still in dark about fabrication of number plate of registration. Therefore, the order for confiscation was passed on 13.08.2022 and it was certainly not within 90 days from the date of seizure of the vehicle, thus, contravening Rule 13A (7). The authorities failed to take into consideration this fact and in a mechanical manner passed the impugned orders.

24. Having regard to the facts and circumstances of the case, *prima facie* we are of the considered view that all the authorities namely, the confiscating authority, the appellate authority and the regional authority committed error and failed to discharge the duty cast upon them while passing the impugned orders in the absence of any direct or indirect evidence against the petitioner. Further, it appears that during the pendency of revision of the petitioner, the vehicle in question was auctioned, which shows arbitrariness of the respondent authorities.



25. From the aforesaid discussion, it appears that the action of the authorities is completely arbitrary, unreasonable and shows complete non-application of mind. Therefore, the order dated 13.08.2022 of the confiscating authority, the order dated 19.12.2022 of the appellate authority and the order dated 09.02.2023 of the revisional authority are set aside.

26. In view of the aforesaid facts and the circumstance, we feel compelled to impose exemplary cost upon the respondent authorities and, accordingly, they are directed to pay compensation of Rs.5,00,000/- (five lacs only) to the petitioner within a period of three months from the date of receipt of this order along with the auction amount with interest @ 8% *per annum* from the date of auction till its payment to the petitioner.

27. With the aforesaid observations/directions, the present writ petition stands allowed.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	AFR
CAV DATE	01.11.2023
Uploading Date	24.11.2023
Transmission Date	N.A.

