

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.11188 of 2024**

Arising Out of PS. Case No.-1777 Year-2023 Thana- Excise P.S. District- Muzaffarpur

Kalam Ansari Son Of Jahril Ansari, Vill -Nawada, P.S.- Bishungarh, Distt.-
Hazaribagh, State- Jharkhand

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

| | | |
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| For the Petitioner/s | : | Mr. Anish Kumar, Advocate |
| For the State | : | Mr. Mujtabaul Haque, G.P.-12 Mr. Manish Kumar, AC to GP-12 Mr. Upendra Kumar, APP |

**CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT**

Date : 22-05-2024

The present petition has been filed under Section 482 Cr.PC for quashing and setting aside the order dated 28.11.2023 passed by Ld. Special Judge (Excise), Court No.-II, Muzaffarpur in Excise P.S. Case No. 1777 of 2023 dated 11.09.2023 registered for the offences punishable under Sections 30(a), 32(2) and 48 of Bihar Prohibition and Excise Act, whereby Ld. Special Court has rejected the application filed on behalf of the Petitioner to release the seized Truck bearing Registration No. JH-10CR-7110, Chassis No. MC2ERHRC0PDB05988, Engine No. E446CDP063534 in favour of the Petitioner holding that the jurisdiction of the Special Court is barred under Section 60 of the Bihar



Prohibition and Excise Act to release the vehicle seized under the Act.

2. As per the materials on record, the vehicle in question was seized by the Police with 2847 liter liquor and subsequently, Excise P.S. Case No. 1777 of 2023 dated 11.09.2023 was lodged against the owner, who is the Petitioner herein, and other two Accused persons for offence punishable under Sections 30(a), 32(2) and 48 of Bihar Prohibition and Excise (Amendment) Act.

3. Heard Ld. Counsel for the Petitioner and Ld. APP for the State.

4. Ld. Counsel for the Petitioner submits that the petitioner possesses all valid documents relating to the vehicle showing that he is owner of the vehicle. He further submits that he has also valid documents regarding the liquor which was loaded in the Truck. He also claims that Ld. Special Court has jurisdiction to release the vehicle under the Bihar Prohibition and Excise Act.

5. However, Ld. APP for the State defends the impugned order submitting that under Section 60 of the Bihar Prohibition and Excise Act, 2016, jurisdiction of the Special Court is barred in regard to release of any vehicles seized under



the Bihar Prohibition and Excise Act and hence, there is no illegality or impropriety in the impugned order. He further submits that the seized vehicle in question is liable to be confiscated under Section 56 of the Bihar Prohibition and Excise Act, 2016. However, under Rule 12A of the Bihar Prohibition and Excise Rules, 2021, as stands after amendment in 2022, read with Section 57B of the Act, 2016, the Petitioner is at liberty to get the vehicle released after payment of penalty as stipulated in the Rules.

6. Before I proceed to consider the rival submissions of the parties, it would be pertinent to refer to relevant statutory provisions of the Bihar Prohibition and Excise Act, 2016.

7. Section 60 of Bihar Prohibition and Excise Act, 2016, bars jurisdiction of any Court to pass any order in regard to seized vehicle or other articles under the Act. It reads as follows:-

“60. Bar of jurisdiction in confiscation.- Whenever any liquor, material, still, utensil, implements or apparatus or any receptacle, package, any animal cart, vessel, or other conveyance used in committing any offence, is seized or detained under this Act, no court shall have, notwithstanding anything to the contrary contained in any other law for the time being in force, jurisdiction to make any order with regard to such property.”

8. **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.”

9. 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.”

10. 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."



11. After perusal of the aforesaid statutory provisions, it clearly transpires that jurisdiction of any Court is barred to pass any order in regard to seized vehicle or other items as mentioned in the Section 60 of the Act. It also clearly transpires that the seized material under the Act is liable to be confiscated as per the provisions of the Act and the Rules made thereunder.

12. However, as per the Rule 12A of the Bihar Prohibition and Excise Rules, 2021, the Petitioner has liberty to move an application for releasing the vehicle on payment of penalty as decided by Excise Officials under the Rules.

13. It is also pertinent to note that despite provisions for bar of jurisdiction of any Court in any statute, writ jurisdiction of High Court is not ousted. Here, it would be relevant to refer to **Suresh Sah Vs. State of Bihar & Ors., 2020(1) BLJ 706**, wherein Division Bench of this Court had occasion to consider the jurisdiction of Special Excise Court and High Court in view of Section 60 of Bihar Prohibition and Excise Act, 2016. Here, it was clearly held that in the light of Section 60 of said Act, jurisdiction of Special Excise Court is barred, but such bar does not operate in the exercise of jurisdiction under Article 226 of the Constitution of India. The relevant paragraph of the **Suresh Sah case (supra)** reads as



follows:-

“28. Even if the vehicle is not liable for confiscation then the Special Judge under the Act in view of the bar under Section 60 of the Act does not have the jurisdiction to direct for the release of the vehicle. However, such bar will not operate in exercise of jurisdiction under Article 226 of the Constitution of India, since such power is required to be exercised in the given prevailing monstrous situation.....”

14. In Sunaina @ Suneina Vs. State of Bihar & Ors., (2024 SCC OnLine Pat 851, AIR ONLINE 2024 PAT 73, 2024 (3) BLJ 163), Division Bench of this Court exercising writ jurisdiction, has further held that if the requisites for seizure or confiscation of vehicle are not fulfilled, the seizure or confiscation of any vehicle under the Excise Act, 2016 would be arbitrary and violative of Article 300A of the Constitution and the owner of the vehicle would be entitled not only to the release of the vehicle but even compensation on account of such seizure or confiscation. The relevant paragraph of the judgment reads as follows:-

“27. 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.

28. 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 300 A 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.

29. Hence, the impugned order dated 19.11.2021 passed by the District Collector, Gopalganj in Confiscation (Excise) Case No. 700/2020 is quashed. The District Collector, Gopalganj is also directed to release the motorcycle in question forthwith. He is further directed to pay Rs. 1,00,000/- (Rupees One Lac) to the Petitioner towards compensation. The payment of the compensation must be made within **ten days** of the receipt of the order.”

15. Similar orders have been passed by Division Bench of this Court exercising writ jurisdiction in the following cases also:-

(i) **Binit Kumar Vs. State of Bihar & Ors.,** (2024 SCC OnLine Pat 850, 2024 (2) BLJ 341, 2024 (1) PLJR 905)

(ii) **Shanti Devi Vs. State of Bihar & Ors.,** (2024 SCC OnLine Pat 849, AIR ONLINE 2024 PAT 177, 2024 (3) BLJ 130, 2024 (1) PLJR 905)

(iii) **Amarjeet Yadav Vs. The State of Bihar & Ors.,** (2024 SCC OnLine Pat 853, AIR ONLINE 2024 PAT 127, 2024 (2) BLJ 465, 2024 (2) PLJR 184)

16. In view of the aforesaid facts and circumstances, it clearly emerges that Special Excise Court has no jurisdiction to pass any order in regard to the vehicle seized under the provisions of Bihar Prohibition and Excise Act, 2016. Hence, Ld. Special Excise Court has rightly rejected the application of the Petitioner. There is no illegality or impropriety in the



impugned order, nor is any miscarriage of justice. Accordingly, the present petition is dismissed *in limine* upholding the impugned order.

17. However, the Petitioner, if so advised, is at liberty to invoke writ jurisdiction of this Court, if he is of the view that his vehicle was not liable to be seized under the Excise Act. But if the Petitioner believes that he has violated the statutory provisions of the Bihar Prohibition and Excise Act, 2016 rendering his vehicle liable to be seized/confiscated, he may move appropriate application before the Executive Officials for releasing the vehicle on payment of penalty under the Act and the Rules made thereunder.

(Jitendra Kumar, J.)

ravishankar/ Shoaib

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