

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12055 of 2024

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Anita Devi Wife of Girish, R/o- Karaunda Karoundi, Deoria, P.S.- Khampar,
District- Deoria (UP).

... .. Petitioner/s

Versus

1. The State of Bihar through Secretary, Excise and Prohibition Department
Govt. of Bihar, Patna.
2. The Excise Commissioner, Bihar, Patna.
3. The District Magistrate, Gopalganj, Bihar
4. The Superintendent of Police, Gopalganj, Bihar.
5. The Superintendent of Excise, Gopalganj, Bihar.
6. The SHO, Excise Police Station, Gopalganj, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Kumar Harshvardha, Adv.
For the Respondent/s : Mr.Alok Ranjan, AC to AAG 5

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
C.A.V. JUDGMENT
(Per: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY)

Date : 26-09-2024

In the instant petition, petitioner has prayed for the
following relief(s) :-

- “i. For issuance of writ of certiorari
quashing the order dated 19.03.2024
passed by the Excise Commissioner, Patna
in Excise Appeal Case No. 08 of 20024,
whereby he has directed to return the
2,23,073 rupees after deducting the fine
amount of Rs. 1,01,927 to the petitioner.*
- ii. For directing the Excise Commissioner,*



Patna to restore the possession of said vehicle which is a white coloured Swift Dzire ZDI Car having Registration No. UP52AM2441, Engine No. D13A2911190 and Chasis No. MA3FJEB1S00A03636 which was auctioned by Gopalganj District Administration.

*Iii. For direction may be given for disposal of present case in light of the Hon'ble Patna High Court's decision in **Sunaina Vs. State of Bihar** (CWJC No. 7920/2023) and **Binit Kumar Son Vs. The State of Bihar** (CWJC No. 4040/2023) case.*

iv. For any other order/orders, relief/reliefs for which the petitioner may be entitled in the eyes of law.

2. Briefly stated, the facts of the case is that there is alleged recovery of 1 liter country made liquor from the vehicle (Swift Dzire ZDI Car) in question bearing Registration No. UP52AM-2441. On the basis of aforesaid fact, F.I.R. No. 565 of 2023 dated 23.05.2023 was registered in Gopalganj Excise P.S. under section 30(a) and 37 of the Bihar Prohibition and Excise (Amendment) Act, 2018.

3. Learned counsel for the petitioner submits that there is recovery of only a meager quantity of 1 liter country made liquor from the vehicle in question. He further submits



that proper notice has not been served upon the petitioner, and thereby, respondent authority has violated the cardinal principle of natural justice. The Excise Superintendent, Gopalganj auctioned the petitioner's vehicle vide order dated 13.11.2023 to Anil Kumar Prasad for a sum of Rs. 3,25,000/-. He further submits that the appellate authority directed to return Rs. 2,23,073/- to the petitioner after deducting the fine amount of Rs. 1,01,927/-.

4. Learned counsel for the respondent submits that the order passed by the appellate authority is justified and legal and the same is on the basis of material available on record. The respondent authority ordered for release of the vehicle upon imposing penalty equivalent to 30% of the Insurance value of the vehicle i.e. Rs. 1,01,927/-. The vehicle was auctioned at Rs. 3,25,000/- and the appellate authority has ordered to return Rs. 2,23,073/- to the petitioner after deducting the fine amount of Rs. 1,01,927/-. In this way, the order passed by the respondent authority is justified and legal and on basis of material available on record, and hence, no any interference is needed.

5. Having gone through the material available on record, it is crystal clear that there is recovery of a meager quantity of 1 liter of country made liquor and the vehicle has



been auctioned at Rs. 3,25,000/- which is totally disproportionate to the offence committed and conscious of this Court does not allow to impose harsh penalty for recovery of meager quantity of 1 liter country made liquor. Such disproportionate fine should not be allowed to impose. Imposition of fine also does not commensurate with the offence committed regarding recovery of 1 liter country made liquor. That apart, petitioner is not habitual offender for the offences under Excise Act and Rules.

6. Keeping in view of the discussion made above, we find that the order dated 19.03.2024 passed by the appellate authority in Excise Appeal No. 08 of 2024 is not sustainable in the eye of law and the same is hereby set aside.

7. We are conscious of the fact that auction proceeding has already taken place, the vehicle in question has already been auctioned for a sum of Rs. 3,25,000/- and third party right has already created, and therefore, we are not remitting the matter as we are exercising extra-ordinary jurisdiction under Article 226 of the Constitution of India. Further we are of the opinion that for recovery of such a meager quantity of 1 liter country made liquor, imposition of fine of Rs. 1,01,927/- is on higher side and too harsh and, as such, it is



reduced to a sum of Rs. 10,000/-. Certified copy of this judgment shall be produced within two weeks before the confiscating authority i.e. Sub-Divisional Magistrate, Gopalganj and the auction money amounting to Rs. 3,25,000/- be released in favour of the petitioner within a period of six weeks from the date of deposit of Rs. 10,000/- towards fine.

4. With the above observation/direction, the present petition stands disposed of.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

mcv/-

AFR/NAFR	AFR
CAV DATE	23.09.2024
Uploading Date	26.09.2024
Transmission Date	26.09.2024

