

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No. 1655 of 2017

Arising Out of PS.Case No. -null Year- null Thana -null District- SHEOHAR

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Rajan Sah, Son of Lakhu Sah, R/o Village - Basant patti, P.S. - Purnahiya, District - Sheohar.

.... Petitioners

Versus

1. The State of Bihar through the District Magistrate, Sheohar.
2. The Superintendent of Police, Sheohar.
3. The Excise Superintendent, Sheohar.
4. The Officer-In-Charge, Sheohar P.S., District- Sheohar.

.... Respondents

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Appearance :

For the Petitioner : Mr. Hans Lal Kumar, Advocate

For the Respondents : Mr.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 06-10-2017

Heard learned counsels for the parties.

The shop and the land on which it situates appertaining to Khata No. 93, Kheshra No. 1736, Area 5.11 Dhurs and Khata No. 93, Kheshra No. 1737, Area 12.11 Dhurs of the petitioner has been sealed for violation of the provisions of the Bihar Prohibition and Excise (Amendment) Act, 2016 and for the occurrence aforesaid Purnahiya P.S. Case No. 19 of 2016 was registered and thereafter confiscation proceeding has been started.

The said order is under challenge in this criminal writ petition.

Submission of the learned counsel for the petitioner is that the issue whether the Executive Authority have power to confiscate and seal the shop and land seized in connection with the



aforesaid case which power, is exercisable only by a Judicial Authority, is sub judice before a large Bench of this Court in L.P.A. No. 1647 of 2015 (**Baleshwar Roy vs. The State of Bihar & Ors.**). In the circumstances, till the decision of the L.P.A. aforesaid, further proceeding of Confiscation Case No. 17 of 2017 arising out of Purnahiya P.S. Case No. 19 of 2016 may kindly be stayed and the shop and land be put in possession of the petitioner by way of interim measure.

Learned counsel for the petitioner placed reliance on a judgment of this Court in a case of **Smt. Manorama Devi @ Manorma Devi vs. The State of Bihar & Ors.** (Cr.W.J.C. No. 605 of 2016) relevant part whereof is reproduced hereinbelow:

“Learned counsel for the petitioner confines to the prayer made in this writ petition to unsealing residential premises of the petitioner, from where allegedly a few bottles of liquor were recovered less than one month after the notification was issued on 05.04.2016.

Considering the facts and circumstances and considering the various orders that have been passed in various cases, we direct that the premises of the petitioner be unsealed without prejudice to the State in respect of any other matter which would be disposed of in accordance with law.”

Since the authority of the confiscation officer is under challenge before a Larger Bench of this Court in the referred L.P.A., it



is directed that operation of the impugned order shall remain stayed till disposal of the L.P.A. aforesaid and shall be subject to the result of the L.P.A. aforesaid.

Considering the facts and circumstances of the case, let the respondents immediately unseal the shop and release the land of the petitioner and hand over its possession to the petitioner, subject to the final result of L.P.A. with condition that the petitioner shall not dispose of the said shop and land or put under encumbrances without permission of the District Magistrate, Sheohar.

With the aforesaid observation, this writ application stands disposed of.

(Birendra Kumar, J)

Kundan/-

AFR/NAFR	N.A.
CAV DATE	N.A.
Uploading Date	09.10.2017
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