

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20474 of 2016

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Avinash Kumar @ Nikku, Son of Sri Vidyanand Thakur, Resident of Mohalla-
Gannipur, P.S. Kazi Mohammadpur, District- Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar through the Excise Commissioner, Government of Bihar, Patna.
2. The Collector, Muzaffarpur, District- Muzaffarpur.
3. The Excise Superintendent, Muzaffarpur, District- Muzaffarpur.
4. The Assistant District Supply Officer, Muzaffarpur, District- Muzaffarpur.
5. The Excise Inspector, East-cum-West Muzaffarpur, District- Muzaffarpur.
6. The Excise Sub- Inspector, Force-1, Muzaffarpur, District- Sitamarhi.

.... Respondent/s

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Appearance :

For the Petitioner : Mr. Vijay Kumar Singh, Advocate
For the Respondents : Mr. Lalit Kishore, PAAG-1

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 15-05-2017

Even though various reliefs are claimed in the writ petition, which includes quashing of the confiscation proceedings initiated against the petitioner under the Bihar Prohibition and Excise Act, 2016, but considering the fact that the confiscation proceedings are yet to be decided by the District Magistrate, Muzaffarpur and the petitioner has primarily challenged the act of the District Magistrate in seizing and sealing his grocery shop, we are only inclined to consider the question of granting interim protection to the petitioner pending finalization of the confiscation proceedings initiated against the



petitioner under Section 68G of the Bihar Excise Act.

Petitioner has a small grocery shop situated in District Muzaffarpur and on 17.04.2016 when the shop of the petitioner was raided by the authorities of the Excise Department, two bottles containing 180 ml each of foreign liquor was seized from the petitioner's grocery shop as is evident from the seizure memo (Annexure P-1). Based on the same, the shop of the petitioner was sealed, he was arrested and inventory of the shop prepared as is evident from Annexure-3 and notice for auction of the shop issued pending finalization of the confiscation proceedings. Challenging all these actions as are contained in the order dated 02.08.2016 (Annexure P-4), this writ petition has been filed.

Learned counsel for the petitioner argues that merely because two bottles containing 180 ml each of foreign liquor was found in the shop of the petitioner, the offence does not warrant the drastic action to be taken against the petitioner and thereby preventing him from earning his living by the vocation carried out by him on sale and purchase in the grocery shop. Accordingly, contending that at least pending finalization of the confiscation case the petitioner should be permitted to carry out his business activities and earn his living to maintain his family, the writ petition has been filed.

The respondents have filed a detailed counter affidavit



and tried to justify their action based on the statutory provisions as are contained in Bihar Excise Act, 1915 as amended from time to time particularly by Act No.3 of 2016.

Having heard learned counsel for the parties, we are of the considered view that as far as the merit of the confiscation proceedings initiated against the petitioner is concerned, the same need not be interfered with and gone into in this writ petition as the same is subjudiced before the competent statutory authority, namely, the District Magistrate, Muzaffarpur, who has to take action after considering various aspects of the matter and objections of the petitioners. However, on going through the facts relevant for the case with regard to release of the shop in question pending finalization of the confiscation case, we find that from the list of inventories made by the Department authorities as are contained in Annexure-3, the petitioner is running a small shop selling various grocery items and if the entire inventory contained in Annexure-3 is taken note of, the value of the goods would not be more than 30,000-40,000 rupees.

That being so, in the peculiar facts and circumstances of this case, interest of justice requires that pending finalization of the confiscation proceedings the petitioner should be permitted to use the shop in question, carry out his vocation and earn a living for himself and his family members as preventing the petitioner even from doing



this may cause great injustice to the petitioner.

Taking note of the aforesaid, we allow this petition in part and direct that pending finalization of the confiscation proceedings, the shop in question of the petitioner shall not be auctioned and the shop shall be released to the petitioner, subject to the petitioner furnishing security bond to the tune of Rs.50,000/- (rupees fifty thousand) to the satisfaction of the District Magistrate, Muzaffarpur and further undertaking that he shall not alienate the shop or deal with in any manner whatsoever prejudicial to the interest of the State in the pending confiscation case.

With the aforesaid, the writ petition stands allowed and disposed of. All other legal questions involved in the matter relating to the issue in question are left open to be decided in appropriate case.

(Rajendra Menon, CJ)

(Sudhir Singh, J)

Narendra/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	18.05.2017
Transmission Date	

