

## IN THE HIGH COURT OF JUDICATURE AT PATNA

### Criminal Writ Jurisdiction Case No.663 of 2017

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

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1. Raushan Kumar S/o - Ashok Kumar Choubey, resident of village - Khurrampur Bahilwara, P.S. - Saraiya, District - Muzaffarpur.
  2. Pramod Choubey S/o Kailash Choubey resident of village - Khurrampur Bahilwara, P.S. - Saraiya, District - Muzaffarpur.

.... .... Petitioner/s

Versus

1. The State of Bihar through Secretary, Department of Excise, Government of Bihar, Patna.
2. The Collector, Muzaffarpur.
3. Superintendent of Excise, Muzaffarpur.

.... .... Respondent/s

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#### Appearance :

For the Petitioner/s : Mr. Sanjay Parasmani, Advocate

For the Respondent/s : Mr. Anil Kumar Sinha, GA-1

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**CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR**

ORAL JUDGMENT

**Date: 12-09-2017**

Heard learned counsel for the petitioners and the State.

The Betel Shop (Gumti) made of wooden pillars and walls of this petitioner situated at Ajijpur, within Saraiya P.S., was sealed by the authorities as it was found that the petitioner had violated the provisions of Excise Laws. For the occurrence aforesaid a prosecution report was submitted and subsequently Confiscation Case No.13 of 2016-17 was initiated by the District Magistrate, Muzaffarpur.

By order dated 28.10.2016, the District Magistrate, Muzaffarpur, has confiscated the said Gumti. The aforesaid order is



under challenge in this writ application.

Submission of the learned counsel for the petitioners is that criminal prosecution is itself bad-in-law as the offence alleged is punishable with minimum imprisonment of seven years and only prosecution report of two pages has been filed assuming that the same is the judgment of the trial Court and no further evidence is needed for conviction of the petitioner. Moreover, in a mechanical and hurried manner, confiscation proceeding has been initiated though the power of the executive authority to confiscate is under challenge before a larger Bench of this Court in **L.P.A. No.1647 of 2015** on the ground that the said power is exercisable by a judicial authority only.

Submission is that till adjudication of the aforesaid issue the impugned order as well as the entire proceeding in the confiscation case aforesaid be stayed and the authority is directed to unseal the Gumti of the petitioner, which shall be subject to the result of the L.P.A. aforesaid.

After hearing the parties, further proceeding of confiscation case aforesaid shall remain stayed till adjudication of the issue in the L.P.A. aforesaid. The authorities are directed to unseal the Gumti in favour of the petitioners. The petitioners shall not dispose of the said Gumti in any manner without permission of the District Magistrate, Muzaffarpur.



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

**(Birendra Kumar, J)**

Mkr./-

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| AFR/NAFR          | NAFR       |
| CAV DATE          | NA         |
| Uploading Date    | 14.09.2017 |
| Transmission Date | 14.09.2017 |

