

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.88 of 2018

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1. Nirmala Devi, W/o Shankar Singh, S/o Late Kamleshwari Prasad Singh,
resident of Village- Barhiya Ward No. 7, P.S. Barahiya, District-
Lakhisarai.

.... Petitioner/s

Versus

1. The State of Bihar Through The Principal Secretary, Department of
Prohibition And Excise, Govt. of Bihar P. S. Sachibalye Thana , Dist. Patna.
2. The Principal Secretary Transport Department, Govt, of Bihar, Patna.
3. The Collector cum the District Magistrate Lakhisarai, District Lakhisarai.
4. The Superintendent of Police Lakhisarai, District- Lakhisarai.
5. The Superintended of Excise Lakhisarai.
6. The S.H.O. of Barahiya P.S. of Lakhisarai District.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Alok Kumar, Adv.
Mr. Neeraj Kumar, Adv.
For the Respondent/s : Mr. Vikash Kumar (SC11)

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN
PRASAD
ORAL ORDER

2 16-02-2018 Heard learned counsel for the petitioner and learned
counsel representing the State.

Petitioner in the present case has prayed for
quashing the order dated 28.08.2017 passed by the Collector,
Lakhisarai in Confiscation (Excise) Case No.37 of 2017 as
contained in Annexure-3 series to the writ application. She has
also prayed for ad interim de-sealing of the house which has been
seized in connection with Barahiya P.S. Case No.54 of 2017
registered under Sections 272 and 273 of the I.P.C. and Sections
38(i) and 38(ii) of the Bihar Prohibition and Excise Act, 2016.



Learned counsel for the petitioner submits that the Collector, Lakhisarai had no power to initiate a confiscation proceeding because he happens to be an executive and the question as to whether an executive can initiate a confiscation proceeding is under challenge before a Division Bench of this Court in LPA NO.1647 of 2015. Learned counsel further submits that for the purpose of de-sealing of the house in question provisionally, petitioner is ready and willing to abide by the terms and conditions which may be imposed by this Court.

Learned counsel for the State submits that the petitioner has an alternative statutory remedy of appeal or may pursue his remedy in civil writ where virus of the provisions of confiscation under Bihar Prohibition and Excise Act, 2016 may be challenged.

Let the petitioner avail alternative statutory remedy of Appeal or invoke jurisdiction of the Constitutional Court, if so advised, within eight weeks.

In the meantime, pending finalization of confiscation order, let the house of the petitioner be provisionally de-sealed/released in her favour on production of document of title in respect of the house in question and the petitioner furnishes a surety bond of Rs.5,00,000/- (five lacs) in form of bank guarantee



or by deposit of title deeds of immovable property lying within the jurisdiction of the concerned authority/court or any other security of like nature to the satisfaction of the concerned authority/court.

The concerned court/authority shall get prepared a photograph duly certified and a Panchnama of the house in sealed condition before de-sealing of the same and the same will be kept on the record.

The petitioner undertakes not to challenge the said photograph and Panchanama in course of trial or the confiscation proceeding, as the case may be.

The petitioner shall also give an undertaking that she will not deal with the house in question in favour of any third party or create any interest adverse to the interest of the State without permission of the Court and shall not allow any illegal act to be committed in the house in question. The petitioner shall also give an undertaking that if any portion of the house is rented out she will get done the prior police verification of the said person before handing over the possession of any part of the house.

The application stands disposed off.

(Rajeev Ranjan Prasad, J)

Arvind/-

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