

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8968 of 2018

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1. Brihaspati Mukhiya, Son of Late Birju Mukhiya,
 2. Ramesh Mukhiya @ Ramesh Kumar Mukhiya, Son of Late Brihaspati Mukhiya,
 3. Manoj Mukhiya @ Manoj Kumar Mukhiya, Son of Late Brihaspati Mukhiya,
- All are resident of Village- Bandihuli, P.S.- Baheri, District- Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Excise Department, Government of Bihar, Patna.
2. The Principal Secretary, Home Department, Government of Bihar, Patna.
3. The Director General of Police, Bihar, Patna.
4. The Collector-cum-District Magistrate, Darbhanga.
5. The Excise Superintendent, Darbhanga.
6. The Officer-in-Charge of Baheri Police Station District- Darbhanga.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Rajesh Kumar
For the Respondent/s : Mr.Vikash Kumar -Sc11

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

2 20-12-2018 This writ application has been preferred for quashing of the order dated 16.02.2018 passed by the District Collector-cum-District Magistrate, Darbhanga in Excise Confiscation Case No. 17 of 2018 arising out of Baheri P.S. Case No. 227 of 2017 dated 05.11.2017 registered under Sections 30 (a) of the Bihar Prohibition & Excise Act, 2016 (hereinafter referred to as the Excise At, 2016).

It is the case of the petitioners that vide registered sale deed dated 26.12.2008 the petitioner no. 1 purchased a piece of



land in his village for construction of a residential house. Petitioner nos. 2 and 3 are the sons of petitioner no. 1. As per allegations, contained in first information report, the patrolling party got a confidential information that the petitioner nos. 2 and 3 are indulged in preparing the country made liquor in the house in question and they sale the wine so prepared. It is alleged that when the patrolling party reached near the house of the petitioner nos. 2 and 3, one person started fleeing away who was caught there and from his possession 300 gm. (ml.) of country made wine was recovered. It is further alleged that on the disclosure made by the arrested person (petitioner no. 2) the patrolling party entered in the house and conducted a search from where they recovered; (i) two plastic containers in which 10 kg. each of 'Kachha Gur' and (ii) one Aluminum utensil which according to the patrolling party, were kept in the house for preparation of country made wine.

In the aforementioned background while a first information report was lodged giving rise to Baheri P.S. Case No. 227 of 2017, a confiscation proceeding was also initiated vide Excise Confiscation Case No. 17 of 2018.

Learned Senior Counsel representing the petitioners has placed before this Court a copy of the notice as contained in



Annexure-2 to the present writ application which were served on petitioner nos. 2 and 3. The notice alleges that the house in question which is a brick and khaprail house was being used by both of them for a trade and transportation of illicit liquor and therefore, why the house could not be confiscated. Learned Senior Counsel submits that no notice was given to petitioner no. 1 who is the absolute owner of the house in question. The petitioner nos. 2 and 3 are said to have appeared in confiscation proceeding wherein they took plea that they have no house in Mauja Bahera, Thana No. 81 and that the seizure list shows that only 'Kachha Gur' was recovered and there was no recovery of any illicit liquor from the house in question. They also alleged violation of Section 62 of the Excise Act, 2016 as according to them, the premises could have been sealed only if any liquor or intoxicant would have been found in the premises.

Learned Senior Counsel submits that the word 'intoxicant' has been defined under Section 2 (40) of the Excise Act, 2016 and word 'liquor' has been defined under Section 2 (44) of the Excise Act, 2016 and unless the Police finds any liquor or intoxicant, the premises could not have been sealed. It is, thus, submitted that the order impugned dated 16.02.2018 by which the Collector-cum-District Magistrate, Darbhanga has



confiscated the house of the petitioners is bad in law and is liable to be set aside. Learned Senior Counsel submits that the order is fit to be set aside on the ground of violation of principles of natural justice and jurisdictional error committed by the Collector-cum-District Magistrate, Darbhanga.

On the other hand, learned counsel representing the State has opposed the prayer of the petitioners. It is submitted that the petitioners have alternative remedy of appeal against the order dated 16.02.2018 passed in Excise Confiscation Case No. 17 of 2018, therefore, this Court may not entertain this writ application under Article 226 of the Constitution of India. The whole argument of learned counsel for the State clusters around the availability of alternative remedy.

Having heard learned Senior Counsel for the petitioners and learned counsel representing the State, we are of the considered opinion that the availability of alternative remedy is not a bar in entertaining a writ application. If this Court sitting in its writ jurisdiction finds that the impugned order has been passed in violation of principles of natural justice and/or the confiscating authority has committed a jurisdictional error which has resulted in gross injustice to the petitioners, the writ application cannot be thrown out only because an alternative



statutory appeal is provided under the Excise Act, 2016. Limited to such examination as to compliance with the principles of natural justice and the exercise of power by the confiscating authority in terms of the power conferred upon him under the provisions of the Excise Act, 2016, may be looked into by this Court sitting in its writ jurisdiction. It is well settled that the Rule of alternative remedy is a rule of convenience rather than a rule of law.

In the present case, we find that on record it is crystal clear that no intoxicant or liquor has been recovered from the premises in question. Section 2 (40) which defines “intoxicant” and 2(44) which provides definition of “liquor” are reproduced hereunder for ready reference:

“Section 2 (40) “*intoxicant*” means-

- (i) liquor, or
- (ii) Spirit include silent spirit or ENA, or
- (iii) Methyl Alcohol, or
- (iv) Ethanol, whether denatured or not; or
- (v) any substance from which the liquor may be distilled and which is declared by the State Government by notification in the Official Gazette to be an intoxicant for the purpose of this Act, or
- (vi) intoxicating drug, or
- (vii) medicinal preparation as defined under Medicinal and Toilet Preparations (Excise Duties) Act, 1955; or
- (viii) any preparation or ingredient,



either medicinal or otherwise, whether solid, semi solid, liquid, semi liquid or gaseous, either made locally or otherwise, that may serve as an alcohol or a substitute for alcohol and is used or consumed for the purposes of getting intoxicated.”

Section 2 (44) “**Liquor**” means country or traditional liquor, Indian Made Foreign Liquor, foreign liquor or any preparation or ingredient, whether solid, semi solid, liquid, semi liquid or gaseous, either made locally or otherwise, that may serve as an alcohol or a substitute for alcohol and is used or consumed for the purposes of getting intoxicated;”

On a careful reading of the definitions mentioned above, it will appear that to bring any preparation or ingredient within the meaning of word “intoxicant” and “liquor” it must be shown that such preparation or ingredient may serve as alcohol or a substitute of alcohol and may be used or consumed for the purposes of getting intoxicated. In the present case the patrolling party has seized ‘Kachha Gur’ and one utensil alone which are not and cannot be served as alcohol for the purpose of intoxication. At this stage, we take note of Section 56 of the Excise Act, 2016 which reads as under :-

“Things liable for confiscation.-
Whenever an offence has been committed, which is punishable



under this Act, following things shall be liable to confiscation, namely-

(a) any intoxicant, liquor, material, still, utensil, implement, apparatus in respect of or by means of which such offence has been committed;

(b) any intoxicant or liquor unlawfully imported, transported, manufactured, sold or brought along with or in addition to, any intoxicant, liable to confiscation under clause (a);

(c) any receptacle, package, or covering in which anything liable to confiscation under clause (a) or clause (b), is found, and the other contents, if any, of such receptacle, package or covering;

(d) any animal, vehicle, vessel or other conveyance used for carrying the same.

(e) any premises or part thereof that may have been used for storing or manufacturing any liquor or intoxicant or for committing any other offence under this Act.”

Again when we go through the opening line of Section 56 of the Excise Act, 2016, it appears that this Section comes into play only when offence has been committed. The sentence ‘whenever an offence has been committed’ clearly indicates that the things mentioned under Section 56 of the Excise Act, 2016 become liable for confiscation only when an offence has been committed. Clause (a), (b), (c), and (d) are going a long way to show that it is only when any material or



utensil is found to have been used as a means for commission of the offence under the Excise Act, 2016, such material and utensils are liable to be confiscated. Further under clause (e) of Section 56 of the Excise Act, 2016 any premises or part thereof that may have been issued for storing or manufacturing any liquor or intoxicant or for committing any other offence under this Act will be liable to be confiscated. Under clause (e) again the word ‘for committing....’ sufficiently indicate that it has its relation with the opening line of Section 56. This Court would have no hesitation in concluding that unless an offence has been committed which is punishable under the Excise Act, 2016 using any premises or part thereof, the same cannot be liable for confiscation.

In the present case we have have already reached to a conclusion that what has been seized are that ‘Kachha Gur’ and one utensil from the premises in question. Inside the house the Police did not find any ‘intoxicant’ or ‘liquor’ suggesting their preparation by use of the ‘Kachha Gur’ and the utensil. Merely because in the house the Police found that ‘Kachha Gur’ were kept in two containers of 10 kg. each, a case for confiscation of the premises cannot be made out by reaching to a conclusion based on surmises and conjectures. We are afraid that if the



Police power is allowed to be used by complying surmises and conjectures and on a mere imagination, it will result in misuse of powers by Police and will make residential house of a villager capable of being confiscated de hors to the provisions of Section 56 of the Excise Act, 2016. There is nothing in this case which may constitute an offence under the provisions of the Excise Act, 2016. It is, therefore, a case in which the Collector-cum-District Magistrate has committed a jurisdictional error. The impugned order is contrary to statutory scheme. Earlier in the case of **Diwakar Kumar Singh Vs. The State of Bihar through the Principal Secretary, Excise Department & Ors.** reported in **2018 (3) PLJR 403** a learned co-ordinate Bench of this Court has considered the scope and order of Section 56 of the Excise Act, 2016, the ratio of the said judgment would be fully applicable in the facts and circumstances of the present case.

We have also noticed that the land in question is exclusively owned by petitioner no. 1 by virtue of a registered sale deed standing in his name alone. Before passing a confiscation order, the Collector-cum-District Magistrate, Darbhanga was obliged to find out the name of absolute owner of the property and he was required to be served giving him an



opportunity to represent himself. This has not been done in the present case. Since we have considered the legality of the impugned order on the face of the statutory provisions, as discussed above, we find no reason to remit the matter back to the Collector-cum-District Magistrate, Darbhanga. The impugned order dated 16.02.2018 passed in Confiscation Case No. 17 of 2018 is hereby set aside and quashed accordingly.

The house in question shall be de-sealed and possession be handed over to petitioner no. 1 who is the absolute owner of the house as per the sale deed within a period of 3 days from the date of receipt/production of a copy of this order.

This application stands allowed.

(Jyoti Saran, J)

(Rajeev Ranjan Prasad, J)

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