

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23619 of 2018

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Naurangi Chaudhari, Son of Ramdhari Choudhary, Resident of Village -
Navabganj, P.S.- Sikandra, District - Jamui

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Excise Department, Bihar, Patna
3. The District Collector, Jamui.
4. The Superintendent of Police, Jamui.
5. The Sub-Divisional Police, Jamui.
6. The Officer Incharge, Sikandra P.S., Distt-Jamui.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajesh Kumar Sinha, Adv.
For the Respondent/s : Mr. Anil Kumar Sinha- Gal

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 26-04-2019

Mr. Rajesh Kumar Sinha, learned counsel appearing for the petitioner informs that final order has been passed in the confiscation proceeding.

Heard learned counsel for the petitioner and learned counsel appearing on behalf of the State.

This application has been filed for a Mandamus directing the State-respondents to release/unseal the house of the petitioner sealed in connection with Sikandra P.S. Case No. 101 of 2016 registered under sections 273 of the Indian Penal Code and for the offences punishable under section 47(A) (F) of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as 'the Act'). The seizure list shows recovery of 5 liters of Mahua Liquor.

Apart from a prayer for unseal of the house in question, the petitioner has also prayed for quashing of the confiscation case



bearing Confiscation Case No.28 of 2018 pending before the District Magistrate, Jamui (Respondent No.3).

Learned counsel for the petitioner submits that for the present, he would not be pressing the prayer for quashing the Confiscation Case No.28 of 2018 as according to him, final order has been passed in the confiscation proceeding. He however, submits that liberty may be granted to the petitioner to challenge the confiscation order in an appropriate jurisdiction by filing an appeal before the Commissioner. Leave is granted to the petitioner to file appeal as per section 92 of the Act.

In the circumstances discussed, this application is disposed of with liberty to the petitioner to challenge the order of confiscation before the appellate authority as per Section 92 of 'the Act'. In case, such an appeal is preferred within the stipulated period and in case the period has expired then accompanied with an application for condonation of delay, the Appellate Authority shall consider the same keeping in mind that the petitioner was prosecuting his remedy before this Court and the appeal shall be heard on its own merit and disposed of expeditiously.

Learned counsel for the petitioner, at this stage, submits that because the appellate authority has no power to pass an interim order of unseal of the house, he would press this application for provisionally unsealing the house in question pending disposal of appeal.

Learned counsel for the State is present and submits that in the given facts and circumstances of this case if at all the Court is willing to consider provisional unsealing of the house then the interest of the State is required to be protected.

Considering the facts and circumstances of the case where it is said to be a residential house under seizure for more than two years and the petitioner is ready to furnishing adequate security to safeguard the interest of the State, following the consistent views



of the Division Bench of this Court, we direct that pending filing and disposal of the appeal, the house of the petitioner in question be provisionally unsealed and possession be handed over to the petitioner on the petitioner's depositing the original title deed of the property in question as security with one surety to the extent of value of the property as per the circle rate with the District Magistrate, Jamui. On submission of the original title deed of the property in question with the surety, the House shall be de-sealed and possession be handed over within one week thereof. The title deed deposited by the petitioner shall be kept in safe custody of the Confiscating Authority.

The owner of the property shall undertake that he will not deal with the property in question and shall not create any third party interest whatsoever in the meanwhile.

In case, the petitioner fails to take recourse to the appellate remedy within four weeks hence, this order shall stand recalled and the respondent shall be at liberty to proceed in accordance with law.

The application is allowed with the observations and directions set out hereinabove.

(Jyoti Saran, J)

(Anjani Kumar Sharan, J)

skpathak/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09.05.2019
Transmission Date	NA

