

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4905 of 2019

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Dharmendra Mandal Son of Lakshmi Mandal Resident of Village-Maksasapur,
P.S.-Kasim Bazar, District-Munger

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Excise Department,
Govt. of Bihar Patna
2. The Principal Secretary, Excise Department, Govt. of Bihar, Patna
3. The Collector cum District Magistrate, Munger
4. The Superintendent of Excise, Munger
5. The Certificate Officer, Munger

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Jyoti Ranjan Jha, Advocate
For the Respondent/s : Mr.Anil Kr. Sinha (Ga1)

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 25-07-2019 Heard learned counsel for the petitioner and learned
counsel representing the State.

The petitioner in the present case is praying for a writ
in the nature of writ of Certiorari to quash and cancel the entire
Certificate Case No. 15/2016-17 which is said to be pending
before the Certificate Officer, Munger. He has also prayed for
staying the warrant of arrest issued against him in the said
certificate proceeding.

In course of argument learned counsel for the
petitioner tried to impress upon this Court that the objection
preferred by the petitioner before the Certificate Officer has not
been decided, therefore, even before determination of the



liability the Certificate Officer has proceeded to recover the certificate amount which is not just and proper.

Learned counsel for the State has opposed the prayer by submitting that from the various orders passed by the Certificate Officer present at Annexure '1' it appears that initially the petitioner avoided service of notice for a long time, he, however, appeared after issuance of warrant of arrest on 18.04.2018 through his Advocate and filed an objection petition. The said objection petition was sent for comment to the opposite parties vide letter no. 380 dated 20.04.2018. The opposite party (requisitionists) vide their letter no. 488 dated 09.05.2018 submitted before the Certificate Officer that the Certificate Debtor had committed forgery in the matter of payment of license fee through the Challan as it has been revealed in course of Audit that forged Challans were used for getting renewal of the license of the liquor shop.

After going through the said response, the Certificate Officer vide his letter dated 27.06.2018 held that the petitioner has misappropriated the amount through forged Challans, therefore, this amount is recoverable. It is submitted that the order dated 27.06.2018 is nothing but a determination of the liability against which a statutory appeal would lie which the



petitioner has not filed.

It is, thus, submitted that there is no reason to quash the certificate proceeding when the petitioner has failed to pay the certificate amount and at the same time has not availed the statutory remedy in accordance with law.

Having heard learned counsel for the petitioner and State and on going through the records, this Court finds substance in the submission of learned counsel for the State. In the order dated 27.06.2018, the Certificate Officer has, after going through the response of the opposite party, held that the petitioner has misappropriated the amount and the same is recoverable. In the opinion of this Court even though the order dated 27.06.2018 is a short order, contains a determination. The order dated 27.06.2018 is an appealable order. The same is not even under challenge before this Court. This being the position when the petitioner filed another application on 08.10.2018 for recall of the warrant of arrest against him, the Certificate Officer has rightly rejected the same. This Court finds no reason to interfere with the impugned order.

The writ application has no merit. It is dismissed accordingly.

Learned counsel for the petitioner at this stage



submits that liberty may be granted to the petitioner to avail the statutory remedy of appeal which has otherwise become barred by limitation.

Liberty is granted. If the petitioner applies for the statutory remedy under the Bihar & Orisa Public Demand Recovery Act, 1935, the same will be considered on its own merit and in case a question of limitation arises for consideration, the same will be considered keeping in mind that the petitioner had moved this Court in the writ application.

(Rajeev Ranjan Prasad, J)

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