

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18679 of 2019

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Bajjnath Chaudhari Son of Devraj Chaudhari, Resident of Village-Gangahar,
Police Station-Nokha, District-Rohtas ... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Excise,
Government of Bihar, Patna.
2. The District Magistrate, Rohtas at Sasaram.
3. The Superintendent of Police, Rohtas at Dehri-on-Sone.
4. The District Excise Officer, Rohtas at Sasaram.
5. The S.H.O. Nokha Police Station, District-Rohtas.

... .. Respondents

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Appearance :

For the Petitioner : Mr.Rajani Kant Singh, Advocate
For the Respondents : Mr.Vikash Kumar (SC11)

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**

and

HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH

ORAL JUDGMENT

**(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA)**

Date : 16-12-2019

1. Heard learned counsel for the petitioner as well as
learned counsel for the State.

2. The petitioner seeks indulgence of this Court for
issuance of direction to respondent no.2 to unseal the room of
the petitioner situated over RS Khata No. 106, RS Plot No.131,
Area 01 decimal, Mauza Gangahar, Police Station Nokha,
District Rohtas which was sealed by the informant of Nokha
Police Station Case No. 153 of 2019 when he recovered near
about 35.1 liters India Made Foreign Liquor from the room of
the house of the petitioner situated on the above stated plot



number.

3. Grievance of the petitioner is that the petitioner happens to be a poor person and as a matter of fact nothing was recovered from his house but even then the informant lodged Nokha Police Station Case No. 153 of 2019 for the offence punishable under section 30(a) of the Bihar Prohibition and Excise (Amendment) Act, 2018.

4. Learned counsel of the petitioner submits that the petitioner happens to be a land less person and above stated land was settled to him by the State Government and after that the petitioner got constructed his house over the said land but the informant of Nokha Police Station Case No. 153 of 2019, on the pretext of recovery of illicit liquor, sealed the house of the petitioner and also lodged the above stated Nokha Police Station Case No. 153 of 2019. Learned counsel of the petitioner further submits that the informant of Nokha Police Station Case No. 153 of 2019 has not sent any report to the District Magistrate, Rohtas at Sasaram for initiation of confiscation proceedings and the petitioner being a poor person, is residing under the open sky along with his other family members.

5. No counter affidavit has been filed on behalf of the State, though a copy of the writ petition was served upon the



State on 3.9.2019. However, learned counsel appearing for the State refutes the above plea of the petitioner arguing that the informant of Nokha Police Station Case No. 153 of 2019 had ample power to seal the house of the petitioner after recovery of illicit liquor from his house.

6. Section 62 of the Bihar Prohibition and Excise Act, 2016 speaks that if it comes to the notice of any Excise officer or any police officer, not below the rank of a Sub Inspector, that any liquor or intoxicant has been found at a particular premises or a particular premises or a part thereof is or has been used for committing any offence under this Act, he may immediately seal the premises and send a report to the Collector for the confiscation of the same. Provided that if the said premises are temporary structures which cannot be effectively sealed, then the Excise Officer or the police officer, with the order of the Collector, may demolish such temporary structures.

7. Bare perusal of the aforesaid provision goes to show that the police officer, not below the rank of the Sub Inspector, has the power to seal any premises if he finds any liquor or intoxicant in the aforesaid preemies and immediately after sealing of the aforesaid premises, he shall send a report to the Collector for the confiscation of the same.



8. In the present case, it is obvious from perusal of Annexure 1, the certified photo stat copy of F.I.R. and seizure list of Nokha Police Station Case No.153 of 2019 that allegedly, illicit liquor was recovered by the Assistant Sub Inspector of Nokha Police Station from the house of the petitioner and it appears that it was the said ASI of Nokha Police Station who not only prepared seizure list but also sealed the house of the petitioner. In our view, the aforesaid ASI of Nokha Police Station had no authority to seal the house of the petitioner even after recovery of illicit liquor from the house of the petitioner because Section 62 of the Bihar Prohibition and Excise Act, 2016 empowers the Sub Inspector of Police as well as other police officer who are above the rank of Sub Inspector but admittedly, the informant of Nokha Police Station Case No. 153 of 2019 was not in the rank of Sub Inspector at the time of making seizure and seal of the house of the petitioner. Therefore, in our view, this writ petition is liable to be allowed.

Accordingly, on the basis of the aforesaid discussions, the writ petition is allowed and the Collector Rohtas at Sasaram is directed to take steps to unseal the house of the petitioner which is situated on RS Khata No. 106, RS Plot No.131, Area 01 decimal, Mauza Gangahar, Police Station Nokha, District



Rohtas within three days from the date of receipt/production of
a copy of this order.

9. In the aforesaid manner, this writ petition stands
disposed of.

(Hemant Kumar Srivastava, J)

(Prabhat Kumar Singh, J)

Shashi

AFR/NAFR	NA
CAV DATE	NA
Uploading Date	08.01.2020
Transmission Date	

