

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11786 of 2019

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Ganga Prasad Yadav @ Ganga Ram Yadav, (Owner of Sealed Shop/Build. and Father of accu of Nirmal PS (Owner of Sealed Shop/Build. and Father of accu.of Nirmali P.S. case no.137 /18)S/o late Yogi yadav resident of Itahari, P.O.-Belhi, P.S.-Nirmali, District-Supaul

... .. Petitioner/s

Versus

1. The State of Bihar, through Principal Secretary, Government of Bihar, Excise Department, Patna
2. Collector-Cum-District Magistrate, Supaul
3. Excise Superintendent, Supaul
4. Senior Superintendent of Police Supaul

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Arun
For the Respondent/s : Mr.Vikash Kumar (Sc11)

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

and

HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

Date : 25-02-2020

Heard Mr. Sanjay Kumar, learned counsel for the petitioner and learned A.C. to S.C.-11, appearing on behalf of the respondents.

It appears that writ application was registered on 24.05.2019 and the matter was taken up on 05.09.2019 and on the prayer of learned S.C.-11, this Court adjourned the matter for 16.09.2019 to enable the counsel for the State to file counter affidavit. Thereafter, the matter was taken up on 21.12.2019 and as a last indulgence, the matter was adjourned for 10.01.2020 in order to enable the learned S.C.-11 to file counter affidavit. Thereafter, on the request of learned S.C.-11, the matter was again adjourned vide order dated 19.02.2020



for listing the matter on 24.02.2020 but till date no counter affidavit has been filed by the Collector-cum-District Magistrate, Supaul.

The present application has been filed for directing the State-respondents to release/ unseal the furniture shop of the petitioner bearing Jamabandi No.1067 situated over, Khesra no.-315, in Ward No.-7, P.S.-Nirmali, District Supaul in favour of the petitioner, which has been seized in connection with Nirmali P.S. Case No.137 of 2018 registered of the offences punishable under Section 30(a) of the Bihar Prohibition and Excise (Amendment) Act, 2018, (hereinafter referred to as 'the Act').

The relief, as prayed for in paragraph No.1 of the writ application reads as follows :-

“1. (i) That the present writ application on behalf of the petitioner for issuance of appropriate writ/ writs, order/orders for release of the furniture shop of the petitioner bearing Jamabandi No.1067, Khesra no.-315 which has been house in connection with Nirmali P.S. Case No.137 of 2018 dated 11.11.2018 registered u/s 30(a) of Bihar Prohibition & Excise Act, 2016 for the alleged total recovery of 4 litres and 800 ml country made Nepali liquor and which is pending in the Court of learned Special Judge, Excise Act, Supaul and for any other relief / reliefs to which the petitioner may be entitled to in the facts and circumstances of the case.”

The prosecution case, got initiated as per the written report of Ram Chabila Singh, Sub Inspector of Police submitted to S.H.O., Nirmali is to the effect that on 11.11.2018 at 6:30 P.M., a secret information was received that at Nirmali ward No.7 near



Ambedkar Chowk, one Bonod Yadav is selling liquor and on raid, one person was apprehended from the furniture shop who disclosed his name as Binod Kumar and from the Furniture Shop in question, 4.800 litres of country made liquor were recovered, leading to registration of Nirmali P.S. Case No.137 of 2018.

It is submitted by learned counsel for the petitioner that the petitioner is the registered owner of the Furniture Shop in question. It is further submitted by learned counsel for the petitioner that he has not been made accused and was not present in the shop at the time of occurrence. It is further submitted by learned counsel for the petitioner that the current receipt of Nagar Panchayat has been brought on record, as Annexure-1 series of the writ application. It is further submitted that the confiscation proceeding has not been initiated till date and the petitioner is facing undue hardship due to sealing of the shop in question.

Mr. Rewti Raman submits that the counter affidavit filed on behalf of respondent no.4, Sr. Superintendent of Police, Supal dated 20.08.2019 reflects that proposal for confiscation and destruction of the seized liquor and de-sealing of the furniture shop was transmitted to the District Magistrate vide letter No.874/P.C. dated 30.11.2018, as contained Annexure-A to the counter



affidavit. Statement to that effect has been made in para 9 of the counter affidavit which reads as follows -

“That it is stated with regard to the contents of paragraph No.9 that the proposal for confiscation of the seized furniture shop was duly submitted through letter No.874/P.c. dated 30.11.2018 of the office of this respondent. The petitioner owes to prove his rest contention to the full satisfaction of this Hon’ble Court.”

Considering the rival submissions of the parties, it appears that seizure has been made by Assistant Sub-Inspector of Police, Mr. Ram Chabila Singh whereas Section 73(e) mandates that the seizure cannot be made by an officer below the rank of Sub Inspector of Police. Hence, the very seizure appears to be dehors the provisions of the Act and moreover, the FIR does not suggests that any sealing of the house was made.

Section 62 of the Act provides the procedure for sealing the premises which reads as follows :-

“62. Premises liable to be sealed – If it comes to the notice of any Excise Officer or any police officer, not belong 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 sent 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.”

From Section 62 of the Act, it appears that sealing has to be done immediately after seizure of liquor or intoxicant or the



premises or part of it being used for committing offence under the Act and sealing authority has to transmit report immediately to the Collector, but in the present case, nothing has been done. The proposal transmitted to S.P. for confiscation reflects that the owner of the Furniture Shop has been named as Binod Yadav who is the only accused in the present case and not the petitioner, meaning thereby neither the confiscating agency nor the S.P., Supaul is aware about the fact that proposal for confiscation which was initially transmitted by Sub Inspector of Police vide letter dated 19.11.2018 suggest that furniture shop was sealed, which is contrary to the averments made in the FIR. All these things suggests the mechanical manner in which the proceeding has been conducted.

Since no counter affidavit has been filed in last six months in spite of numerous adjournments as a result nothing has been brought on record with regard to initiation of confiscation proceeding, hence, it can safely be presumed that confiscation proceeding has not been initiated till date.

Considering the facts and circumstances of the case where it is said to be a furniture shop under the seizure of more than six months and the petitioner is ready to furnish adequate security to safeguard the interest of the State, following the



consistent views of the Division Bench of this Court, we direct that pending finalization of confiscation proceeding, the furniture shop of the petitioner be provisionally un-sealed and possession be handed over to the petitioner, on the condition that the petitioner shall submit 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, Supaul. The title deed submitted by the petitioner shall be kept in safe custody of the Confiscating Authority.

The owner of the property shall undertake that during the pendency of the confiscation proceeding, he will not deal with the property in question and shall not create any third party interest whatsoever.

The writ application is allowed to the extent as stated hereinabove.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

sanjeev/-

AFR/NAFR	NA
CAV DATE	NA
Uploading Date	27.03.2020
Transmission Date	NA

