IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.31 of 2020

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Mitthu Choudhary Son of Domi Choudhary, Resident of Mohalla- Hatiya Gachhi Near Kabristan Ward No. 31 Saharsa, P.S. and District- Saharsa.

... ... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Old Secretariate, Bihar, Patna.
2. The Principal Secretary, Excise Department Govt. of Bihar, Patna.
3. The Commissioner, Koshi Division, Saharsa.
4. The Collector, Saharsa.
5. The Excise Superintendent, Saharsa.
6. The Excise Sub-Inspector, Saharsa.
7. The Circle Officer, Kahra, Saharsa.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Amarnath Jha, Advocate

For the Respondent/s : Mr.Vikash Kumar , SC-11

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
and
HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

3 31-01-2020 Heard Mr. Amarnath Jha, learned counsel for the petitioner, Mr. Vikash Kumar, learned SC-11 for the State-respondents and Ms. Shailja Sharma, District Magistrate, Saharsa.

The present writ application has basically been filed for unseal/release of the courtyard (Angan) seized in Special (Excise) Case No. 515 of 2018 registered for the offence punishable under Section 30(a) of Bihar Prohibition and Excise

Act, 2016, as amended by the Amendment Act 8 of 2018 (hereinafter referred to as 'the Act') and to stay the proceeding of Confiscation (Excise) Case No. 226/18-19 pending before the Collector, Saharsa.

The relief, as prayed for by the petitioner as stipulated in paragraph no.1 of the writ application reads as follows :-

"(i) For issuance of an appropriate writ directing the respondents for release of the courtyard (angan) seized in connection with Special (Excise) Case No. 515/18 registered for the offence U/S 30(a) Bihar Prohibition and Excise Act, 2016 by the Sub Inspector, Excise, Saharsa in connection with which confiscation (Excise) case No. 226/18-19 is pending before the collector, Saharsa.

(ii) For stay of the proceeding of confiscation (Excise) case No. 226/18-19 pending before the collector, Saharsa till diposal of the present writ application.

(iii) For any other relief (s)/order(s)/direction (s) to which the petitioner may be entitled in the facts and circumstances of the case."

The basic question in issue is (i) whether a confiscation proceeding can be initiated with regard to a premises or part of the premises or house for confiscating the same without sealing it and (ii) whether without sealing the premises or part thereof, the provision under Section 62 or without seizing or detaining under the provision of Section 58(1) of the Act report can be transmitted to the Collector by the detaining or seizing authority for initiation of confiscation proceeding.

It appears from the prosecution report that 10 litres of country made liquor were recovered from the courtyard of the petitioner but the courtyard could not be sealed because the place of seizure was occupied by several persons. The seizure list being part of the prosecution report suggests seizure of 10 litres of country made liquor only, so the place of seizure, courtyard could not be put under seizure/seal. Section 62 of the Act reads as:-

> "**62- Premises liable to be sealed.--** 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"

The aforequoted provision of Section 62 of 2016 Act has been substituted by Act 8 of 2018 with effect from 30.07.2018. Though Section 62 of the Amendment Act and Section 62 of the 2016, Act are verbatim the same.

Section 62 of the Act stipulates the condition in which the premises or part of it are liable to be sealed, if it comes to the notice of the excise officer or the police officer not below the rank of Sub Inspector that liquor or intoxicant has been found at a particular premises or part of it or the same has been used for committing any offence under the Act, he may immediately seal the premises and send report to the Collector for confiscation. The sealing is exempted if the structure is temporary in such a nature that it cannot be sealed and in that circumstance, temporary structure may be demolished by the Excise Officer or Police Officer with order of the Collector.

The words 'sealing', 'seizure' and 'confiscation' have not been defined in the Excise Act or Code of Criminal Procedure.

As per Black's Law Dictionary the meaning of the word 'seal' is as under:-

(1) “An impression or sign that has legal consequence when applied to an instrument”;

(2) “A fastening that must be broken before acess can be obtained”.

Hence, in context of the Bihar Prohibition and Excise Act, 2016, the 2nd meaning would be applicable, meaning thereby that the premise has to be fastened/closed, so that it remains out of bounds for the public or for the person owning such premise.

The meaning of seizure, as given in Black’s Law Dictionary is as under:-

Seizure - “The act or an instance of taking possession of a person or property by legal right or process; especially in constitutional law, a confiscation or arrest that may interfere with a person’s reasonable expectation of privacy”.

So far as the meaning of the word ‘Confiscation’ is concerned, as per Black’s Law Dictionary, Confiscation means (1) seizure of property for the public treasury; (2) seizure of property by actual or supposed authority”.

Hence, correlating the meaning of seizure, it can be appreciated that sealing would be understood as an act of closure of a premises, which would interfere with the person’s right to use such premise, until the same stands sealed.

Here in the instant case, it is the courtyard of the petitioner, from where it is alleged that the seizure of liquor has been made. It has been specifically contended in paragraph no. 8, of the counter affidavit that the said courtyard was in use of other family member hence, effective sealing was not possible and thus the Sub-Inspector of Excise did not seal the courtyard under Section 62 of the Bihar Prohibition and Excise Act, 2016. Paragraph no. 8 of the counter affidavit is quoted as under:-

> "That during process of search and seizure sub-inspector of Excise gathered information that accused Mitthu Chaudhary (Petitioner of this writ petition) using their courtyard for the illegal trade of wine but as courtyard was in the use of other family member and practically not possible for effective sealing so he has not sealed courtyard under section 62 of the Bihar Prohibition and Excise Act."

Hence, it emerges that it is an admitted position that the courtyard was not sealed, as mandated under Section 62 of the Bihar Prohibition and Excise Act, 2016.

In paragraph no. 9 of the counter affidavit, it has been stated that after registration of the case Sub-Inspector of Excise sent a proposal for the confiscation of courtyard to the

Superintendent of Excise who forwarded the same to the District Magistrate, Saharsa on 16.11.2018, consequently confiscation proceeding was initiated vide Confiscation Case No. 226 of 2018-19 for confiscation of the courtyard.

For better appreciation of the case in hand, would be proper to first appreciate provisions incorporated under Sections 56 and 58 of the Act.

The initial provision as contained in Section 56 of 2016 Act reads as follows:-

> “**56. 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;
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> (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 this Act."

Section 56 was substituted by Act 8 of 2018 with effect from 30.07.2018, which reads as follows:-

"**56- Things liable for confiscation.-- Whenever an offence has been committed, which is punishable under this Act.-**

(a) any intoxicant or liquor unlawfully imported, transported, manufactured, sold, stored, possessed, material, utensil, implement, apparatus, package or covering and or the other contents, if any, of such receptacle, package or covering for the purposes of storing, manufacturing or labelling such intoxicant or liquor;

(b) any animal, vehicle, vessel or other conveyance used for carrying any intoxicant or liquor; or

(c) any premises or part thereof that may have been used for storing or manufacturing any liquor or intoxicant or for committing any other offence other this Act:

shall be liable to be confiscated in a manner prescribed under the provisions of the Act,

(d) The State Government, if deem necessary, may issue necessary directions, guidelines, Regulations and instructions with respect to mode and manner of search, seizure and confiscation."

Section 58 of the Act which mandates the procedure for initiating and conducting the confiscation proceeding by the District Collector reads as follows:-

58. Confiscation by District Collector.-- (1) Notwithstanding anything contained in this Act or any other law for the time being in force, where anything liable for confiscation under this Act is seized or detained under the provisions of this Act, the officer seizing and detaining such property shall, without any reasonable delay submit a report to the District Collector who has jurisdiction over the said area;

(2) On receipt of the report under sub-section (1), the District Collector if satisfied that an offence under this Act has been committed, may, whether or not prosecution is instituted for the commission of such an offence and whether or not a case is pending before any court, order confiscation of such property;

(3) The Collector shall, before passing an order under sub-section (2), give a reasonable opportunity to the person concerned, or being heard;

(4) While making an order of confiscation under sub-section (2), the District Collector may also order that such of the properties which the order of confiscation relates, which is his opinion cannot be preserved or are not fit for human consumption, be destroyed. Whenever any confiscated article has to be destroyed in conformity with these provisions, it shall be destroyed in the presence of a Executive Magistrate or officer ordering the confiscation or forfeiture, as the case may be, or in the presence of the Excise Officer not below the ran of a Sub-Inspector;

(5) While making an order of confiscation under sub-section (2), if the District Collector is of the opinion that it is expedient in the public interest to do so, he may order the said property or any part thereof to be sold by public auction or dispose of departmentally and proceeds deposited with the State Government;

(6) The District Collector shall submit a full report of all particulars of confiscation to the Commissioner of Excise within one month of such confiscation."

In our considered opinion and on going through the provisions stipulated under Sections 56(c), 58(1) and 62 of the Act, it emerges that premises or part thereof can be confiscated under Section 62 of the Act if it has been properly sealed and under Section 58, only when there has been any seizure or detention under the provisions of the Act. The word seizure, would also naturally include sealing, though it is not specifically stated in Section 58 of the Act, but the same can be inferred on bare reading of Section 56(c) of the Act. Hence, in the present case under consideration, when the admitted position is that the courtyard was never sealed, any proceeding for confiscating of the courtyard could not have been initiated and if the same has been initiated, we would not hesitate to hold the same to be in utter violation of the provisions of the Act.

Section 58(1) of the Act starts with non-obstante clause and mandates that if any thing which is liable to be confiscated under Section 56 of the Act, the seizing or detaining authority without reasonable delay will transmit a report to the Collector, Similarly, Section 62 of the Act mandates that if it is brought in notice of Excise Officer or Police Officer not below the rank of Sub-Inspector that premises or part of it has been used for committing any offence under the Act, such officer will transmit a report to Collector for confiscation of the said premises or part thereof. Hence, it culls out that for a valid initiation of confiscation proceeding, seizure, detention or sealing is must.

In the present case, the courtyard has neither been detained/seized or sealed, hence, Section 58(1) of the Act, which stipulates about confiscation by District Collector, does not get attracted to the facts of the present case, since Section 58(1) of the Act provides for submission of report to the District Collector only when anything liable for confiscation under this Act is seized or detained. If Section 58(1) of the Act does not permit transmission of the report in the absence of any seizure or detention, then the report submitted in the present case cannot be treated as a report either under Section 58(1) or 62 of the Act. Meaning thereby, reaching to a reasonable satisfaction with regard to commission of offence is a precondition, for passing of an order of confiscation by the Collector. In the present case, confiscation proceeding has been initiated without following the provisions under Section 62 and 56(c) or 58(1) of the Act.

Though, in the present case, the prayer has been made by the petitioner for release of the courtyard but since it is admitted position that courtyard in question has never been sealed, hence, such prayer is misconceived.

In such a circumstance, after considering the submission of learned counsel for the petitioner and counter submission of learned counsel for the State that admittedly sealing of courtyard was not done and since the confiscation proceeding has been initiated mechanically, we expect from District Magistrate, Saharsa to decide it as a preliminary issue, as to whether the courtyard can be confiscated without the same being sealed or seized under Section 62 of the Act or without being seized or detained under Section 73 of the Act, which are preconditions for initiating confiscation proceeding under Section 58(1) and 62 of the Act. It is further expected from the Collector, Saharsa to conclude the confiscation proceeding, being Confiscation (Excise) Case No. 226 of 2018-19, arising out of Special (Excise) Case No. 515 of 2018 within a period of six weeks from the date of receipt/production of a copy of this order in accordance with law after giving due opportunity of hearing to all affected persons including the petitioner.

The petitioner is also expected to appear regularly and participate in the confiscation proceeding.

Accordingly, with the above observation and direction, the present writ application is disposed of.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

DKS/-

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