IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.514 of 2022

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Rajeev Nandan Prasad @ Anil Mahto, S/o Late Sarju Mahto, R/o Village-Bhadwa, P.O.-Itasang, P.S.-Rahui, District-Nalanda, Bihar-803119.

... ... Petitioner/s

Versus

1. The State of Bihar represented through the Additional Chief Secretary, Excise and Registration Department, Government of Bihar, Patna.
2. Commissioner, Department of Excise, Government of Bihar, Vikas Bhawan, Bailey Road, Patna.
3. The Collector, District-Nalanda.
4. Additional Collector-cum-Additional District Magistrate, District-Nalanda.
5. The Superintendent of Police, Bihar Sharif, Nalanda.
6. Superintendent of Excise, Bihar Sharif, District-Nalanda.
7. Thana Adhyaksh, Rahui Police Station, District-Nalanda.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Kiran Kumari, Advocate
For the Respondent/s : Mr.Vikash Kumar (S.C.11)

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE S. KUMAR)

(The proceedings of the Court are being conducted through Video Conferencing and the Advocates joined the proceedings through Video Conferencing from their residence.)

Date : 16-02-2022

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s).

> "i. For quashing of order dated 13.09.2021 (Annexure-2) passed by Additional Collector-cum-Additional District Magistrate, District – Nalanda in Confiscation (Excise) Case No.

290/2021 (State Vs. Rajeev Ranjan Prasad) by which the house of the petitioner bearing Plot No. 1317 under Khata No. 97, Area measuring 0.03 dec. at village Bhadwa, P.O. Itasang, P.S. Rahui, District- Nalanda, Bihar has been seized/sealed.

ii. For quashing of order dated 29.112021 (Annexure-3) passed in Excise Appeal Case 778/2021 (Rajeev Nandan Prasad @ Anil Mahto V Collector, Nalanda & Ors.) by Commissioner, Department of Excise, Government of Bihar by which Adhiharan (Excise) Case No. 290/2021 has been affirmed and dismissed the appeal And/OR pass such order/orders as your Lordships may deem fit and proper.

iii. During the pendency of this writ petition the operation of impugned orders should be stayed."

Briefly stated the facts of the case is that informant who is Officer-in-Charge of Rahui P.S. has alleged that on 25.05.2021 when he was on day patrolling duty he received information that the wife of petitioner Rimpu Devi is engaged in the trade of illicit liquor and when he reached the house of Rimpu Devi, one person seeing the police party tried to flee away was apprehended who disclosed his name as Ram Nandan Prasad @ Anil Mahto (petitioner) and when search was made then one gas cooking stove alongwith one cylinder, two aluminium vessels, two teena, along with 4 litre country made liquor in a plastic jar of red colour were recovered from the kitchen built on the roof of the house which were seized and seizure memo was prepared and Rimpu Devi and Ram Nandan Prasad @ Anil Mahto (petitioner) were arrested giving rise to Rahui P.S. Case No. 249 of 2021 instituted under Sections 30(a)(b)(c) & (d) of the Bihar Prohibition and Excise Act and on recommendation of the police, confiscation case being confiscation case no.290 of 2021 was initiated against the owner of the House.

Show cause was filed on behalf of owner of the house and thereafter by a cryptic and unreasoned order, the house has been confiscated and appeal and revision preferred were dismissed.

The procedure to be followed by the Confiscating Authority has been enumerated under Rule 13 of Bihar Prohibition and Excise Rules, 2021 which reads as follows:-

> "13.(A) Seizure of animal/vehicle/vessel/other conveyance.- (i) On interception and search, if an officer within the meaning of Section 73 of the Act finds that any animal, vehicle, vessel or other conveyance is being used for carrying any intoxicant or liquor, then the same shall be seized and forwarded to the nearest police station/Excise Office within whose jurisdiction the seizure has been affected along with seizure list for institution of case.
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> (ii) Upon institution of the case, the proposal for confiscation of animal/vehicle/vessel/other conveyance shall be sent to the Collector along with due verification report of the District Transport Officer or any authority authorized for the purpose of registration of the conveyance and the report of chemical examination within 30 days of seizure. In case of delay in submission of the proposal for confiscation, the police/Excise Officer

> will have to explain the delay.
> (B) Confiscation of Vehicles, Vessels or other Conveyance.- (i) The Collector, on receipt of proposal for confiscation of any vehicle(s) or other conveyance from Police Officer/Excise Officer, shall issue show cause notice to owner of the said vehicle or the vessel or other conveyance.
> (ii) Such notice issued by the Collector shall be served as per procedure prescribed in the Code of Criminal Procedure, 1973 for service of summons.
> (iii) the Collector shall provide reasonable opportunity of hearing to the owner. The Investigating Officer/Inquiry Officer shall also be given opportunity to participate in such hearing.
> (iv) If, on the date fixed for hearing, the person(s) to whom the notice has validly been served fail(s) to appear in the proceeding on two consecutive dates fixed for hearing, the confiscating authority shall proceed to pass the order *ex-parte.*
> (v) The Collector, after hearing the parties, on satisfaction that an offence has been committed in terms of the Act, shall pass appropriate order with respect to seized vehicle or vessel or conveyance as the case may be.
> (vi) Any person aggrieved by the order passed by the Collector under the provisions of the Act may file appeal in the manner prescribed under these Rules."

It is true that Excise Act carries a reverse burden of proof but initial burden lies upon the department to prove the FIR, search, seizure and recovery of the illicit liquor from the house as well as seized substance is liquor by producing, the report of the chemical analyst and thereafter only the initial burden of the department stands satisfied and burden shifts upon the owner of the house to account for its satisfactory explanation in respect of illicit liquor recovered from his house. In absence of which, order for confiscation of the house can be passed.

In the present case, none of the procedures, as prescribed under the Excise Rules, has been followed by the confiscating authority and department has failed to discharge its initial burden to prove search, seizure and recovery of the illicit liquor from the seized house, as no documentary or oral evidence has been led by the department nor any evidence has been proved by affidavit. Even the report of chemical analyst does not find mention in the order passed by the confiscating authority and the order has been passed in a most cryptic and mechanical manner.

For the reasons, as stated above, the impugned orders are not sustainable either in law or on fact and accordingly set aside. The case is remanded to the Confiscating Authority, Nalanda to hold a *de novo* proceeding and to pass a fresh order in accordance with law.

The writ petition is allowed.

(Sanjay Karol, CJ)

(S. Kumar, J)

Rajiv/veena-

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