

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12734 of 2017

Manoj Kumar Alias Manoj Sah Alias Manoj Gupta S/o Late Mahendra Prasad, Resident of Natwar, P.S. Natwar, District Rohtas.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Collector-cum- District Magistrate, Rohtas.
3. The Superintendent of Excise, Rohtas.
4. The Superintendent of Police, Rohtas.
5. The Station House Officer S.H.O., Natwar P.S., Sub- Division- Bikramganj, District- Rohtas.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Satyabir Bharti, Advocate
For the Respondent/s	:	Mr. Vivek Prasad -GP 7

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE PARTHA SARTHY)

5 20-06-2023 Heard Mr. Satyabir Bharti learned counsel for the petitioner and Mr. Vivek Prasad learned counsel for the respondents.

2. The petitioner has filed the instant application for the following relief(s) :-

“i) Issuance of an appropriate writ (s), order(s), direction(s), quashing the Excise Confiscation Case No.99 of 2017 (State Vs Manoj Sah @ Manoj Gupta), initiated by the Collector-cum- District



Magistrate, Rohtas (Sasaram), by which in purported exercise of powers conferred under Section 58 of the Bihar Prohibition and Excise Act, 2016, the entire residential house of the petitioner is sought to be confiscated in connection with Natwar P.S. Case No.31 of 2017, dated 9.4.2017 initiated, inter alia, under Sections 30, 35 and 38 of the Bihar Prohibition and Excise Act, 2016;

(ii) To stay the further proceedings in connection with Excise Confiscation Case No.99 of 2017, pending in the Court of Collector-cum- District Magistrate, Rohtas (Sasaram), during the pendency of the writ application;

(iii) To pass such other order(s), direction(s) as your Lordships may deem fit and proper in the facts and circumstances of the case.”

3. The case of the petitioner in brief is that pursuant to a raid conducted on the three storied house belonging to the petitioner and his brother, four bottles of Indian Made Foreign Liquor (IMFL) containing 180 ml each was recovered and the petitioner and one another were arrested. This led to registration of the FIR being Natwar P.S. Case no. 31 of 2017 on 9.4.2017 under sections 30, 35 and 38 of the Bihar Prohibition and Excise Act 2016. It is further case of the petitioner that on the request made by the SHO of Natwar Police Station, Excise Confiscation Case no. 99 of 2017 was initiated by the Collector-cum-District Magistrate, Rohtas wherein notice dated 19.8.2017 was issued



to the petitioner to show cause as to why the seized house be not confiscated. Learned counsel for the petitioner submits that the confiscation case is not sustainable in law for various reasons including the point that issue of confiscation by an executive authority is subject matter of a case in this Court in LPA no. 1647 of 2015.

4. Learned counsel for the respondents submitted that on recovery of IMFL from the house of the petitioner, the petitioner and one another were arrested on the spot and the FIR was registered. It is further submitted that finding the case to be true, charge sheet has been submitted by the police and on the Investigating Officer of the case writing a letter to the Collector-cum-District Magistrate, Rohtas, confiscation proceeding was started. It is lastly submitted that LPA no. 1647 of 2015 being referred to on behalf of the petitioner has already been decided by this Court by order dated 6.2.2019.

5. Heard learned counsel for the parties.

6. The relevant facts in brief are that seizure of a total 720 ml of IMFL from the house of the petitioner led to registration of FIR being Natwar P.S. Case no. 31 of 2017 under sections 30, 35 and 38 of the Bihar Prohibition and Excise Act, 2016 and arrest of the petitioner on the spot. On the request of



the police authorities the Collector-cum-District Magistrate, Rohtas (Sasaram) initiated Confiscation Case no. 99 of 2017 for confiscation of the house.

7. At this stage itself it may be mentioned that by order dated 6.9.2017 passed in the instant application, while granting time to the respondents to file their counter affidavit, this Court was pleased to grant interim protection to the petitioner in the following terms :-

“06-09-2017 Four weeks time to file counter affidavit.

In the meanwhile, if the property of the petitioner situated in Khata No.216, Plot No.102/4 and 103/4 has not been sealed till date, further proceeding for sealing of the property shall be stayed in connection with Excise Confiscation Case No.99 of 2017 pending before Collector-cum-District Magistrate, Rohtas (Sasaram), subject to the condition that the petitioner shall not alienate or deal with the property in any manner so as to prejudice the right of the State in confiscation proceeding.”

8. So far as the reliance of the learned counsel for the petitioner on the case of Baleshwar Rai vs. the State of Bihar (LPA no. 1647 of 2015) is concerned, it may be stated here that the same is of no assistance to the petitioner as this Court relying on the decision of the Full Bench did not find any illegality in exercise of powers by the Collector-cum-District Magistrate and by order dated 6.2.2019 disposed of the appeal



in the following terms.

“6. In our opinion, even though the Full Bench has answered the issues but in view of the aforesaid interim direction in the present case, the order of release has already been passed by the competent authority subject to the satisfaction of the said authority of furnishing the security bond. Consequently, we see no reason any further to keep the matter pending and we, accordingly, dispose of this appeal with liberty to the appellant to approach the District Magistrate, Madhepura for passing of an appropriate order provided the appellant furnishes the security bond to the satisfaction of the District Magistrate and in that event the District Magistrate shall pass the order in relation to the release or otherwise of the vehicle within six weeks of the date of the production of certified copy of the order before him keeping in view the earlier order dated 16.06.2016 passed by the District Magistrate, Madhepura.

9. In view of the above, pursuant to the judgment of the Full Bench, no illegality having been found in the Collector-cum-District Magistrate being the prosecuting agency under the Bihar Prohibition and Excise Act, 2016, the Court finds no merit in the instant application and the same is dismissed.



10. However, in the facts of the case, in view of Rule 12B having been introduced in the Bihar Prohibition and Excise Act, 2021 and which provides for release of premises on payment of penalty, the petitioner will be at liberty to approach the Collector-cum-District Magistrate, Rohtas under the said Rule 12B and in case the Collector finds the release to be permissible and the penalty imposed is paid, the premises of the petitioner in question shall be released.

11. At the same time it is observed that in case the petitioner chooses not approach the Collector under Rule 12B, the Collector will be at liberty to proceed with the confiscation in connection with the Excise Confession Case no. 99 of 2017 in accordance with law.

12. Further taking into note that the premises in question which is the subject matter of confiscation case is the residential house of the petitioner and also in view of the fact that petitioner has been granted interim protection in his favour by order dated 6.9.2017, as quoted herein above, it is directed that the said interim protection with respect to the property of the petitioner in connection with Excise Confiscation Case no. 99 of 2017 pending before the Collector-cum-District Magistrate, Rohtas (Sasaram) shall continue for a further period



of two months from today to enable an application under Rule 12B. If no such application is filed and the penalty imposed is not paid, then thereafter the Collector-cum-District Magistrate, Rohtas shall proceed with the case in Excise Confiscation Case no. 99 of 2017 in accordance with law.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

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