

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12054 of 2022

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Md Jawed Alam Son of Late Md Aminuddin, Resident of Budhanagar,
Islampur PS, Nalanda, Bihar- 110087

... .. Petitioner/s

Versus

1. The State of Bihar through Additional Chief Secretary, Prohibition, Excise and Registration Department, Govt. of Bihar,
2. The Excise Commissioner, Bihar
3. District Magistrate-cum-Collector, Nalanda.
4. Deputy Collector Land Reform, Hilsa, Nalanda.
5. Superintendent of Police, Nalanda.
6. Superintendent Prohibition, Nalanda.
7. SHO, Islampur PS, Nalanda.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dhananjay Kumar, Advocate
For the Respondent/s : Mr. Vikash Kumar (SC-11)

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 12-04-2023

The writ petition is final challenging the confiscation order passed by the District Collector, Nalanda under the Bihar Prohibition and Excise Act, 2015.

2. The petitioner is the owner of the premises, which is confiscated under Confiscation Case No. 35 of 2022. The petitioner contends that there was no recovery of prohibited materials made from the said premises itself. The owner was



not named in the FIR as an accused and that the order has been passed based on mere surmises and conjectures.

3. The learned counsel for the petitioner vehemently argued that the allegations are cooked up and there is no such person mentioned in the FIR residing in the said premises or carrying out any sale of illicit liquor, as has been alleged in the FIR.

4. The learned State counsel, on the other hand, would point out that there is an examination of the facts by the Original Authority, the Appellate and Revisional Authorities, as is seen from the documents produced as Annexures 2 to 4 respectively in the writ petition and this Court is not sitting in appeal; but on judicial review, the contours of which do not permit interference to the impugned orders.

5. We have first seen the FIR, which is produced as Annexure -1. The Sub Inspector, Islampur Police Station, while on patrolling duty, received information from a person, who is not named in the FIR that there is a cattle shed near a leather godown at Ward No. 19 wherein illegal liquor business was being carried out. Immediately, the party proceeded therein and on reaching near the leather godown, saw a woman hanging something after putting it in a gunny bag on the cattle shed, near about where, one or two persons were also standing.



6. On seeing the Police vehicle, the woman as also the persons standing there fled and despite attempts to catch them, the Police did not succeed. Some villagers and passers-by assembled there and in the presence of two named witnesses, a search was conducted and from within the gunny bag, a gallon having capacity of 10 litres was recovered wherein was found six litres of country made liquor. The independent witnesses put their signatures on the seizure list and one copy was pasted on the wall of the cattle shed.

7. The FIR then proceeds to record that on enquiry with the persons who came to the spot, it was revealed that one Birchi Devi, wife of Suresh Yadav, was the woman who ran away after abandoning the contraband, and the cattle shed belongs to the petitioner herein. It was further recorded that the husband of Birchi Devi had taken the premises on lease from the owner of the land and was running a milk business and his wife was engaged in making cow dung cakes as also sale of illicit liquor.

8. We notice that the power of confiscation conferred under Section 58(2) specifically requires the District Collector to be satisfied that an offence under the Act has been committed whether or not prosecution is instituted or a case is pending before any other Court for the purpose of confiscating of articles seized.



9. We have gone through the original order which was read over by the learned State counsel to us. We find that the District Collector has narrated the facts which is extracted hereon:-

“After hearing the learned Advocate of the opposition, perusal of the documents related to the proposal received from the Superintendent of Police, Nalanda, it transpires that on the basis of confidential information of S.I of Islampur P.S, on 11.07.2021, a khatal (Cattleshed) was built at the Leather Godown of Ward No. 19 of Budhanagar on the Land of Md. Javed@ Mister S/o Late Amin Uddin R/o Budha Nagar, Islampur P.S, Nalanda which is opened on lease by Suresh Yadav's son-in-law Khatal and does milk business and his wife Birchi Devi deals in country made liquor business. About 05 litres of country made liquor was found kept in a gallon of 10 litre which was seized by preparing a seizure list. U/s 58(3) of the Act, notice was issued to the opposite party for filing a show-cause. The statement of the opposite party that the matter of recovery of liquor has been stated but the place is outside the Land of the petitioner. The petitioner has nothing to do with Birchi Devi and has been wrongly told by someone that Birchi Devi and her husband are tenants of the petitioner. The said contention of the opposite party is not acceptable. Prohibited liquor was found on search at the spot, in front of independent witnesses, yet the allegation that the applicant has nothing to do with Birchi Devi and has been wrongly stated by someone that Birchi Devi and her husband are tenants of the applicant, is baseless and far from facts. Thus, no satisfactory evidence was produced by the opposite party before the Court to establish that the reported allegation is false.



It is clear from the recovery of banned liquor from the said Khatal(Cattleshed) that the said Khatal is used for storing and selling the banned liquor. Thus, in this case there is sufficient evidence available on record to have confiscated the seized Khatal(Cattleshed).”

10. True, if the above facts as noticed by the Confiscating Authority is substantiated by materials then we cannot interfere with the same. However, what we see from the order is that such satisfaction has been recorded only on the basis of the statements in the FIR. There is nothing stated as to how the woman who fled from the scene was identified as Birchi Devi and the husband’s tenancy was proved.

11. Even as per the FIR, the independent witnesses came to the scene after Birchi Devi ran away from the spot. Hence, there could be no identification made of Birchi Devi by the villagers who gathered there, after the woman who hung the gunny bag on the cattle shed fled from the spot. Yet again, there is nothing to indicate a lease having been made by the owner of the premises to the husband of the so called Birchi Devi, who is also said to be carrying out a milk business in the cattle shed.

12. What comes out of the FIR is only that the Police on reaching the spot found a woman putting something into a gunny bag and hanging it on the cattle shed; who also fled from the spot



upon seeing the police party. There is little to justify for proceedings against the property for confiscation. The appellate and revisional orders also were on the same lines of the Confiscation Authority. The Statutory Authorities have proceeded to confiscate the premises, without any substantiating material and the findings based on the mere statements made in the FIR; of the identity of the alleged accused as also the tenancy of her husband; without any proof, is nothing but perverse.

13. We find no reason to sustain the orders of confiscation and its affirmation in appeal and revision. We set aside the orders passed, produced as Annexure 2 to 4 in the writ petition. The premises would stand absolved of the confiscation proceedings and if the same is sealed, it shall be released to the petitioner unconditionally and immediately.

14. The writ petition stands allowed without any order as to costs.

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

sharun/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	18.04.2023
Transmission Date	

