

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11516 of 2023

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Mukesh Kumar @ Mukesh Ram Son of Vipat Ram, Resident of Dargah Bela,
Village- Chakjado (Manikpur Thagu), @ Akhtiarpur, Police Station- Baligao,
District- Vaishali.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Excise,
Patna, Bihar.
2. The District Magistrate, Vaishali.
3. The Additional Collector, Vaishali.
4. The Superintendent of Police, Vaishali.
5. The S.H.O. Baligao, Police Station- Vaishali.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Dharmesh Kumar, Advocate
For the Respondent/s	:	Mr. Kumar Manish (SC-5)
		Ms. Shama Sinha, AC to SC-5

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

2 22-08-2023 In the instant petition, petitioner has prayed for the
following relief(s):-

“1. I. To quash and set aside the order dated 7.10.2022 passed in Confiscation Case No.56/2021-22 (Govt. Vs. Mukesh Ram) by the Court of Additional Collector, Vaishali as the same has been passed in utter disregard of law and although as per claim, notice was issued, also vide paper publications, but it is very surprising and interesting that notice was served to the petitioner on 28.2.2023 i.e. after passing of final order dated 7.10.2022 in Confiscation case aforesaid, the fact can be verified from the service register; moreover the land including Bathan has been confiscated without going into the fact that not a single drop of liquor has been seized, the material and utensil



seized during raid can not be connected to have been used as means for commission of the offence under section the Excise Act, 2016 or under Bihar Prohibition & Excise (Amendment) Act, 2018.

Presumption can not be the basis of confiscation, hence power exercised for confiscation suffers from conjectures and surmises and on a mere imagination, hence misuse of power by the police.

II. And/or issue such the writ/writs, order/orders, directions as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

2. The petitioner has a statutory remedy of appeal and further revision under Section 92 & 93 of the Bihar Prohibition and Excise Act, 2016.

3. Learned counsel for the petitioner submitted that reasons for not approaching or invoking remedy of appeal before the Appellate authority is that order of the Confiscating authority is dated 07.10.2022, it has been communicated to the petitioner only on 28.02.2023 followed by notice on 24.03.2022. Thus, there is a delay in communication of the final order for about four (4) months. Therefore, it is very like that the Appellate authority will not entertain the petitioner's appeal.

4. Having regard to the aforementioned facts and circumstances, the petitioner is at liberty to invoke remedy of appeal before the Appellate authority along with an application for condonation of delay in which petitioner is required to highlight the delay in communication of the Confiscating



authority's order dated 07.10.2022. If such application is filed, the concerned Appellate authority is hereby directed to summon the Confiscating authority's record and find out as to whether there was any delay in communication of Confiscating authority's order dated 07.10.2022 or not? On such examination of records, if the Appellate authority finds that the petitioner had a genuine reason, in that event, the Appellate authority is hereby directed to examine the petitioner's appeal on merit and decide the appeal within a reasonable period of time.

5. With the above observations, present writ petition stands disposed of. The petitioner is also at liberty to make an application for staying the Confiscating authority's order during pendency of the appeal and it shall be considered by the Appellate authority at the earliest.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

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