

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14847 of 2024

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Santosh Kumar Sinha S/o Late Dwarika Garain, Resident of Village- Sundi
Bigha, P.S.-Ekangersarai, District- Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise Department,
Bihar, Patna.
2. The District Magistrate -cum- Collector, Nalanda at Biharsharif.
3. The Sub Divisional Magistrate, Hilsa, District- Nalanda.
4. The Superintendent of Police, Nalanda.
5. The Officer -in- Charge, Ekangersarai Police Station, District- Nalanda.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Binit Kumar, Advocate
For the Respondent/s : Mr. Standing Counsel (7)

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
And
HONOURABLE MR. JUSTICE S. B. PD. SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE S. B. PD. SINGH)

Date : 24-10-2024

In the instant petition, the petitioner has prayed

for the following reliefs(s):-

*1. That this is an application on behalf of
the above named petitioner to issue an
appropriate writ(s), order(s) or direction(s)
particularly in nature of certiorari to quash
entire proceedings of (Excise) Case No.
68/2023 initiated by the Respondent no.-4 the
Sub Divisional Magistrate, Hilsa, Nalanda for
alleged recovery of 2.625 litres country made*

foreign liquor from possession of visitors of marriage hall of the petitioner thus further be pleased to unseal room of Ashirwad Uttam Marriage Hall, Ekangersarai, P.S.- Ekangersarai, District-Nalanda situated on the portion of Khata No.-111, plot no.-345, Mauza-Ekangersarai, Circle- Ekangersarai, District-Nalanda as the same has been sealed with allegation aforesaid, thus a criminal case bearing Ekangersarai P.S. Case No. 197 of 2023 has been instituted for the offence allegedly punishable under section 30(a) of the Bihar Prohibition and Excise Amendment Act, 2022 against few known and unknown visitors of the birthday party in the alleged marriage hall.

2. The petitioner further prays that the Respondent authorities be further directed to pay him appropriate compensation for putting seal over a room of marriage hall in quite arbitrary and whimsical manner, as much as, no fault has been committed by owner of the marriage hall and/or grant any other equitable relief/reliefs befitting in the facts and circumstances of the case.

2. Briefly stated, the facts of the case is that

there is alleged recovery of 2.625 litres of country made foreign liquor from the possession of the visitors of marriage hall namely Ashirwad Uttam Marriage Hall. The petitioner is owner of the aforesaid marriage hall. On the basis of the aforesaid facts, Ekangersarai P.S. Case No. 197 of 2023 dated 15.09.2023 was instituted under Section 30(a) of the Bihar Prohibition & Excise Amendment Act, 2022.

3. It is submitted by learned counsel for the petitioner that petitioner is owner of the said marriage-hall and the interested visitors/customers used to book the marriage-hall of the petitioner for various kind of functions such as, marriage ceremony, ring ceremony, birth-day party etc. The said marriage-hall has been functioning since 2019 and since then no complaint regarding any illegal activity was made either against the marriage-hall authority or the proprietor of the marriage-hall. It is further submitted that on 14.09.2023, the marriage hall was booked to celebrate the birth-day

party and the alleged recovery of 2.625 litres of country made foreign liquor was made from the possession of visitors of the birth-day party. Hence, the marriage-hall and its proprietor have no role in the recovery and seizure of illicit liquor. Moreover, there is recovery of only a meager quantity of 2.625 litres of illicit country made foreign liquor. The petitioner has not been made accused in the F.I.R nor any recovery was made from the exclusive possession of the marriage-hall. The recovery has been made from the possession of visitors of the birth-day party celebration who had been made accused in this case. It is also submitted that now vide Confiscation (Excise) Case No. 68 of 2023, the petitioner has been served upon notice to file his show-cause and the petitioner has already filed show-cause requesting to drop the proceedings as initiated vide Confiscation Case No. 68 of 2023 since the alleged liquor was recovered from the exclusive possession of the visitors of the birth-day party against whom, F.I.R

was registered.

4. Learned counsel for the respondents submits that recovery of illicit liquor was made from the marriage hall of the petitioner and the visitors along with Manager of the Marriage Hall were made accused. The petitioner was properly noticed in Confiscation (Excise) Case no. 68 of 2023 and the respondent authority was justified in taking action under the provisions of the Excise Act. However, the petitioner has alternative remedy to get the room of the marriage-hall unsealed after making payment of penalty in terms of Rule 12(B) of the Bihar Prohibition & Excise Rules, 2021.

5. From perusal of the record, it has transpired that alleged recovery of 2.625 liter of illicit country made foreign liquor has been made from the marriage-hall of the petitioner which was booked by the accused of the F.I.R and the recovery of illicit liquor was made from their conscious possession. Moreover, for recovery of a meager quantity of illicit liquor from the marriage-

hall in question and petitioner having no criminal antecedent, a penalty of Rs. 50,000/-(Fifty Thousands) is appropriate in light of the facts and circumstances of the case.

6. We are conscious of the fact that alleged recovery is of meager quantity and the aforesaid order has been passed while invoking extra ordinary jurisdiction under Article 226 of the Constitution of India for the reasons that unnecessarily petitioner shall not be subjected to various proceedings like Rule of 12B of the Bihar Prohibition and Excise Rules, 2021 read Sections 58, 92 and 93 of the Bihar Prohibition and Excise Act, 2016, for a trivial issue relating to seizure of 2.625 liters of illicit country made foreign liquor and the aforesaid decision is warranted to prevent multiplicity of proceeding under Excise Act and Rules, in the interest of justice.

7. Considering recovery of small quantity of liquor, the petitioner is directed to deposit a penalty of

Rs. 50,000/-(Fifty Thousands) and the concerned authority is hereby directed to collect fine of Rs. 50,000/-(Fifty Thousands) and unseal the room of the Ashirwad Uttam Marriage Hall, which has been sealed on 15.09.2023, within a period of one week from the date of receipt of this order.

8. Accordingly, the writ petition stands disposed of.

(P. B. Bajanthri, J)

(S. B. Pd. Singh, J)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	30/10/2024
Transmission Date	N/A