

(2017) 03 PAT CK 0024

In the Patna High Court

Case No : Criminal Writ Jurisdiction Case No. 1216 of 2016 (Arising out of P.S. Case No. null Year-null Thana-null District-Bhojpur)

Jitendra Singh

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 08-03-2017

Acts Referred:

Bihar Excise (Amendment) Act, 2016 — Section 47, 47(a), 53(b), 54, 68(G)
Code Of Criminal Procedure, 1973 — Section 362

Citation : (2017) 3 Crimes 324 : (2017) 1 BBCJ 496 : (2017) 2 ECrC 584 :
(2017) 2 PLJR 480

Hon'ble Judges : Mr. Birendra Kumar, J.

Bench : Single Bench

Advocate : Shri Krishna Prasad Singh, Sr. Advocate and Shri Surendra Kumar Mishra, Advocate, for the Petitioner; Shri Kumar Vikram, A.C. to G.A.IV, for the Respondent

Final Decision : Allowed

Judgement

Mr. Birendra Kumar, J.— Heard learned counsels for the parties.

2. The petitioners are full-brothers. They are accused in connection with Ara (Town) Police Station Case No. 364 of 2016 registered under Sections 47, 54 and 68G of the Bihar Excise (Amendment) Act, 2016 for the offence, allegedly, committed on 05.07.2016.

3. According to FIR foreign liquor was recovered from the shop of the petitioner no. 1 Jitendra Singh and on the same day in a subsequent search foreign liquor was recovered from a room on the first floor of the house of petitioner no. 2 Sanjay Singh. Both the shop and the room were sealed by the authorities.

4. The petitioners prayed before the learned court below for unsealing of the sealed shop and the room.

5. The learned Chief Judicial Magistrate, Ara by order dated 27.08.2016 allowed

the prayer for unsealing of the shop and the room. In spite of that order, the same was not unsealed, hence, on 29.08.2016 the petitioners again made a complaint to the court below against non-compliance of order dated 27.08.2016. On that petition, the learned court below called for an explanation from the concerned Police Officer. In explanation to that, the Police Officer concerned informed that confiscation proceeding has already been initiated. Considering the information, the learned Chief Judicial Magistrate, Ara by the impugned order dated 15.10.2016 recalled the earlier order dated 27.08.2016 on the ground that confiscation proceeding has already started, therefore, there is no question of release of the sealed shop and the room.

6. In the aforesaid circumstances, the petitioners have invoked the writ jurisdiction of this Court to quash the order dated 15.10.2016 for two reasons; First that a criminal court has no power to recall its earlier operative order and secondly on the ground that in similar circumstances a Division Bench of this Court has ordered for interim release of the vehicle in C.W.J.C. No. 1791 of 2017 on 16.02.2017.

7. On the other hand, learned counsel for the respondents submits that the authorities are empowered to keep under seal and seizure any property used for violation of the provisions of the Bihar Excise (Amendment) Act, 2016 and there is no dispute that confiscation proceeding has already started, hence, petitioners are not entitled to any relief.

8. It is well settled that a criminal Court has no power to recall its earlier order which has the effect of altering the earlier order in view of the specific bar under Section 362 Cr.P.C. as well as catena of judicial pronouncements.

9. Since by the impugned order, the learned court below has recalled its earlier order of release, the impugned order has the effect of altering the earlier order. Hence, the same is not sustainable in law. Accordingly, the impugned order is fit to set aside on this ground alone.

10. In C.W.J.C. No. 1791 of 2017, this Court has passed following orders on 16.02.2017:-

"The petitioner has invoked the writ jurisdiction of this Court for release of Bajaj Pulsar Motor Cycle bearing registration No. BR44D- 7186 seized by the Bihar Police in connection with Complaint Case No. 286(O) of 2016 registered under Section 47(a) and 53(b) of the Bihar Excise (Amendment) Act, 2016, which has been sent to the learned District Magistrate-cum-Collector, Buxar for confiscation. The questions in respect to confiscation of vehicle by the concerned authorities have been referred to the Larger Bench in L.P.A. No. 1647 of 2015. Since the very issue is pending consideration before the Larger Bench, we deem it appropriate to order release of Bajaj Pulsar Motor Cycle bearing registration No. BR44D- 7186 to the petitioner on furnishing surety bonds to the satisfaction of the District Magistrate-cum-Collector, Buxar in connection with Complaint Case No. 286(O) of 2016 subject to the condition that the petitioner shall make

available the vehicle in question before the authority concerned as and when required during the proceedings under the Bihar Excise Act.

List this case after the decision in L.P.A. No. 1647 of 2015."

11. Since the Division Bench of this Court has ordered for release of a movable property during pendency of confiscation proceeding under the same Act, hence, there is no reason to refuse unsealing of the immovable property, with condition that the petitioners shall not use the same in future for violation of the provisions of the Act nor shall dispose of the same to defeat the purpose of the Act.

12. It appears that a similar direction of unsealing of the premises was ordered by a Division Bench of this Court in Cr.W.J.C. No. 605 of 2016 Smt. Manorama Devi @ Manorma Devi v. The State of Bihar through the Chief Secretary, Govt. of Bihar & Ors. on 06.10.2016 which is as follows:-

"Learned counsel for the petitioner confines to the prayer made in this writ petition to unsealing residential premises of the petitioner, from where allegedly a few bottles of liquor were recovered less than one month after the notification was issued on 05.04.2016.

Considering the facts and circumstances and considering the various orders that have been passed in various cases, we direct that the premises of the petitioner be unsealed without prejudice to the State in respect of any other matter which would be disposed of in accordance with law."

13. Considering the facts and directions in other similar matter, the impugned order dated 15.10.2016 is hereby set aside and it is directed that order dated 27.08.2016 passed by the learned Chief Judicial Magistrate, Ara be complied at once.

14. Accordingly, this application stands allowed.