

(2020) 09 PAT CK 0186

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 20705 Of 2019

Niwash Baranwal @ Niwash Kumar

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 14-09-2020

Acts Referred:

Indian Penal Code, 1860 — Section 272, 273

Bihar Prohibition And Excise Act, 2016 — Section 30(D)

Citation : (2020) 09 PAT CK 0186

Hon'ble Judges : Sanjay Karol, CJ;S. Kumar, J

Bench : Division Bench

Advocate : Umesh Prasad, Amardeep, Mrityunjay Kumar, Vikash Kumar

Final Decision : Disposed Of

Judgement

Heard the parties.

Petitioner has prayed for following relief:-

â??This is an application for issuance of an appropriate writ/writs or order/orders for quashing the order dated 22.02.2019 passed by the District

Magistrate-cum-Collector Jamui in confiscation proceeding case No.57 of 2017 and also to give possession to the petitioner of the said confiscated

house bearing khata no.4. khesara 178, RAKwa 3 decimals in village Khotwa, P.S. Sono (Charkapathar) District, Jamui. The alleged house in

connected to (Charkapathar) P.S. Case No.126 of 2017 for offence u/s 272, 273 I.P.C. and 30(D) of Bihar Prohibition and Excise Act.â??

The informant is a police officer who in his written complaint has alleged that on 12.6.2016 he received an information that petitioner is selling Mahua

from his house and on receipt of said information , he along with other police personnel raided the house of petitioner then from the corner of a room,

three bags of Mahua each containing 50 kg of Mahua was recovered and seized and petitioner was apprehended and FIR was lodged giving rise to

(Charkapathar) P.S. Case No.126 of 2017 for offence u/s 272, 273 I.P.C. and 30(D) of Bihar Prohibition and Excise Act and the house was sealed

and proceeding was initiated to confiscate the house in which petitioner filed his show cause stating therein that except Mahua no other article was

found even to remotely suggest that country made liquor was being prepared from said Mahua.

Division Bench of this Court in C.W.J.C. No. 23163 of 2018 (Umesh Kumar @ Umesh Mahto versus The State of Bihar and Ors. and other

analogues matters) has held as follows:-

“Since the Mahua Flowers Rules allows any person to remain in possession of Mahua Flowers to the extent of 5 kg. without any licence

and any quantity in excess thereof, is to be done under a licence, the quantity possessed by the respective petitioners in excess of 5 kg., without a

licence, may be a statutory violation and thus capable of retention by the State Government but in absence of any penal action so provided under

the Rules or the Act for possession of these flowers exceeding the limit, even if the State Government would be within its jurisdiction to

retain the same, the confiscation proceedings cannot be allowed to continue.

In result, we hold that the confiscation proceedings, if any, initiated against the petitioners for alleged violation of Section 3 of the Mahua Flowers

Rules read alongside the provisions of the Act for possession of Mahua Flowers exceeding 5 kgs., is without sanction of law and

consequently the confiscation proceeding, if any, initiated against the petitioners shall stand quashed and the vehicles seized, if not already released,

shall be released in favour of the owner on production of ownership papers.”

In view of Division Bench judgment as referred above, the order dated 22.02.2019 passed by the District Magistrate-cum-Collector Jamui in

confiscation proceeding case No.57 of 2017 is set aside and it is directed that the premises be unsealed and possession to be handed over to the

petitioner forthwith.

The writ petition is disposed of.