

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2984 of 2020

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Meena Devi Wife of Hoti Ray, Resident of Mohalla-B.K. Dutta Lane, New
Jakkanpur, P.S.-Jakkanpur, District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, department of Excise and Prohibition, Government of Bihar, Patna.
2. The District Officer, Patna.
3. The Senior Superintendent of Police, Patna.
4. The Inspector Cum S.H.O. Jakkanpur Police Station, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Santosh Kumar Verma
For the Respondent/s : Mr.Kumar Manish (SC 5)
Mr. Kumar Pankaj, AC to SC 5

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

and

HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

Date : 20-02-2020

Heard learned counsels for the parties.

The present writ application has been filed for
unsealing the house of the petitioner situated at B.K. Dutta
Lane, New Jakkanpur, Patna which has been seized in



connection with Jakkanpur P.S. Case No. 17 of 2020 registered for the offences punishable under Sections 30(a), 38 and 41 of the Bihar Prohibition and Excise Act, 2016 as amended by Amendment Act 8 of 2018 (hereinafter referred to as 'the Act'). The relief prayed for in paragraph 1 of the writ application reads as follows:

“(i) For issuance of writ in the nature of mandamus directing and commanding the respondents to unseal the house of the petitioner situated at B.K. Dutta, Lane, New Jakkanpur under Jakkanpur Police Station which has been sealed by the Respondent No.4 on 7.1.2020 during the raid committed by Respondent No. 4 along with raiding party on information of illegally doing business or sale and supply the wine and during raid seized 48.585 liter foreign liquor from the said house and instituted a case i.e. Jakkanpur Case No. 17/2020 registered on dated 07.01.2020 for the offences Under Section 30(a), 38,41 of Bihar Prohibition and Excise (Amendment) Act 2018 against five named accused, out of which three accused are sons of this petitioner and two others.

(ii) To direct the Respondents to immediately unseal the house of the petitioner



who has not been made accused in this case nor he is indulge in the said business.”

The prosecution case as per the self statement of Inspector Mukesh Kumar Verma, SHO, Jakkanpur Police Station recorded on 7.1.2020 at 5.10 A.M. is to the effect that on 6.1.2020, the informant along with a raiding party, while conducting vehicle check, received a secret information that an absconded accused Ranjit Kumar has received delivery of liquor from his brothers Sanjeet Kumar and Indrajeet Kumar and is ready to conduct the sale of the same through delivery to be made by Chunnu and Govinda. Consequently, raid was laid in the house of Ranjeet from where, 48.585 litres of Indian Made Foreign Liquor was recovered, leading to registration of Jakkanpur P.S. Case No. 17 of 2020.

Learned counsel for the petitioner submits that petitioner is the owner of the premises in question and has brought on record the rent receipt and order of mutation of the house in question. The petitioner has neither been made accused nor has she been noticed till date. It is further submitted that the entire family is on road for no fault.

Mr. Kumar Pankaj, learned AC to SC 5 relying upon the counter affidavit filed on behalf of respondent no. 2,



the District Magistrate, Patna that since liquor was seized from the house in question, hence it was seized/sealed. However, no proposal has been received by the Collector, Patna to initiate confiscation proceeding but as soon as the same is received, needful action will be taken by the District Magistrate. Paragraph nos. 7 and 8 read as follows:

“7. That it is humbly submitted that the office of the Senior Superintendent of Police, Patna has so far not sent the confiscation proposal in the aforesaid matter.

8. That the answering respondent will take needful action in accordance with law when confiscation proposal is received by the Court of the District Magistrate, Patna.”

Having heard learned counsels for the parties, it would be proper to appreciate Section 62 of the Bihar Prohibition and Excise Act, 2016, which stipulates the condition when the premises can be sealed. Section 62 of 2016 Act reads as follows:

“62- Premises liable to be sealed.-- If it comes to the notice of any excise officer or any police officer, not below the rank of a Sub Inspector, that any liquor or intoxicant has been found at a particular premises or a particular premises or a part thereof is or has been used for



committing any offence under this Act, he may immediately seal the premises and send a report to the Collector for the confiscation of the same.

Provided that if the said premises are temporary structures which cannot be effectively sealed, then the Excise Officer or the police officer, with the order of the Collector, may demolish such temporary structures”

The aforequoted provision clearly suggests that if it is brought to the notice of the Excise officer or any police officer, not below the rank of a Sub Inspector, that any liquor or intoxicant has been found at a particular premises, or a part thereof is or has been used for committing any offence under this Act, he may immediately seal the premises and send a report to the Collector for the confiscation of the same. The proviso of the said provision suggests that if the said premises are temporary structures which cannot be effectively sealed, then the Excise Officer or the police officer, with the order of the Collector, may demolish such temporary structure.

In the present case, no doubt, the house in question was sealed on 6.1.2020 whereas the counter affidavit filed on behalf of respondent No. 2 dated 11.2.2020 suggests that no proposal for initiation of confiscation proceeding has



been received by the Collector, which is contrary to the provision of Section 62 of the Act which mandates sealing of premises as soon as it comes to the notice of Excise Officer, or police officer not below the rank of Sub Inspector about the recovery of liquor or intoxicant or commission of the offence under the Act in the premises or part of the premises.

In the present case, the house in question was sealed by the Inspector-cum-SHO, Jakkanpur Police Station but there is nothing on record to suggest that any proposal for initiation of confiscation proceeding has been submitted. Despite the provision being stringent one, procedural safeguards have not been followed, hence it vitiates the act of sealing of the house in question by the authority. The petitioner has claimed to be the owner of the house in question and this fact has not been controverted by the respondent authorities in the counter affidavit.

In the circumstances, no useful purpose will be served in allowing the house in question to be kept in sealed condition and putting the entire family members in inconvenience. Moreover, the petitioner who claims to be owner of the house has not been made accused in the case till date.



Accordingly, we direct the learned Additional District Judge II-cum-Special Judge, Excise, Patna to issue appropriate direction to the respondent no. 4, the Inspector-cum-SHO, Jakkanpur Police Station, Patna to unseal the house in question on the following conditions -

(I) The petitioner will produce the proof of ownership of the house in question;

(II) The petitioner shall give an undertaking on affidavit that he will not execute sale deed in favour of any person with regard to the house in question or alienate or encumber the same creating any kind of adverse interest against the interest of the State;

(IV) The petitioner will deposit the original documents of the house in question before the learned court below.

The entire exercise of unsealing will be done by the learned Court below within ten days of receipt/production of a copy of this order.

It is made clear that we have not expressed any opinion with regard to the merits of this case or with regard to the ownership of the house in question.



Accordingly, the writ application is allowed to
the extent as indicated above.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

