

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14228 of 2022

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Indu Devi Wife of Late Kishore Singh Resident of Elahibagh, Katchera Road,
P.S. Gopalpur at Present Residing at Near Christ church School, P.S.-Kadam
Kuan, Patna-03.

... .. Petitioner/s

Versus

1. The State of Bihar through Additional Chief Secretary Govt. of Bihar.
2. The Excise Commissioner Prohibition Excise and Registration Department,
Govt. of Bihar, New Secretariate, Patna.
3. The District Magistrate Cum Collector, Hindi Bhawan, Chhajhubagh, Patna.
4. The Superintendent of Police, Patna.
5. The Excise Superintendent, Patna.
6. The SHO Gopalpur, Police Station, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Daya Shankar Prasad Sinha, Advocate
For the Respondent/s	:	Mr.Vivek Prasad (G.P.7)

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE S. KUMAR)

(The proceedings of the Court are being conducted through Video Conferencing and the
Advocates joined the proceedings through Video Conferencing from their residence.)

Date : 23-09-2022

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s):-

- i. To direct the respondent authorities to set aside the order of penalty passed by Addl. Chief Secretary in Revision Case No. 166/2022 on 04.08.2022 and order passed in Excise Appeal No. 352/2022 on 03.06.2022 by Excise Commissioner, Patna who passed to release the seized premises with penalty and revisional court also passed the order as imposition of penalty by Excise Commissioner is correct whereby and whereunder Excise commissioner did not disclose the penalty and directed to fill up the form-V before Learned District Magistrate Cum Collector regarding property of the petitioner bearing khata no. 889, Plot No. 249 situated at Elahibagh Katchera Road Manpur Bairiya and said petitioner prays to waive the penalty against the petitioner who is not capable to pay the imposed fine/penalty for which petitioner is not liable/responsible for the occurrence as alleged liquor which was not recovered from conscious and exclusive possession of petitioner.
- ii. To release the sealed/locked house of petitioner and give liberty to petitioner and to operate the key of house who is bonafide owner which was purchased, through registered sale deed no. 1337 in the year 28.02.2003.
- iii. To restrain respondents to proceed with the auction of the aforesaid house property of the petitioner where illicit liquor is not seized in conscious and exclusive possession of petitioner.
- iv. Any other relief or reliefs for which petitioner is entitled.

Allegation is recovery of 200.25 litres of foreign liquor from the tenanted house of the petitioner.

It is submitted that petitioner is owner of house and 200.25 liters of foreign liquor has been recovered from the room

which was let out to tenant Deepu Kumar by the petitioner-landlord and for which a lease deed was entered between the petitioner-landlord and Deepu Kumar (tenant) and possession of the premises was handed over to said Deepu Kumar and even in the FIR name of Deepu Kumar has come who is stated to be indulged in the trade of illicit liquor. Petitioner does not reside in the said premises and has been falsely implicated in this case, and even at the time of raid conducted in the house, petitioner was not found residing there.

It is the specific case of the petitioner that she is a widow lady and had given her house on rent to Deepu Kumar who misused the premises of petitioner for trade of illicit liquor and petitioner has no knowledge of it.

According to Section-54 of the Excise Act, the owner/occupier of the premises is duty bound to give information or report to the nearest police station or excise official, if his premises is being used for trade in illicit liquor, if same comes to his knowledge within six months from the date of knowledge but as petitioner has no knowledge of her premises being used by the tenant, as such, such information could not be given to police/excise official. The said Section further stipulates that even after knowledge, occupier fails to

disclose such information, he shall be liable to be punished for imprisonment up to two years.

Mere, recovery of illicit liquor from the premises which was let out to a tenant cannot result into confiscation of the house, however, the landlord is to establish that it was so used without his knowledge or connivance and all reasonable precautions were taken against such use.

Presumption under Section 32 of the Excise Act, is with respect to offence committed under the Excise Act that if there is any recovery from the premises, it shall be presumed that offence under the Excise Act has been committed and it is for the accused to give satisfactory explanation for such possession of illicit liquor. However, there is no such presumption in confiscation proceeding.

Hon'ble Apex Court in the case of **Abdul Vahab Vs. State of Madhya Pradesh** since reported in **2019 SCC Online MP 7099**, has held as follows:-

“17. By reason of an order of confiscation, a person is deprived of the enjoyment of his property. Article 300A of the Constitution provides that no person shall be deprived of his property save by authority of law. Therefore, to deprive any person of their property, it is necessary for the State, inter-alia, to establish that the property was illegally obtained or is part of the proceeds of crime or the deprivation is warranted for public purpose or public interest.

18. At this stage, we may usefully refer

to this Court's opinion in State of W.B vs. Sujit Kumar Rana **since reported in (2004) 4 SCC 129**. Here it was emphasized on the need to maintain balance between statutes framed in public interest such as the Forest Act, 1927 (and the relevant insertions under W.B Act 22 of 1988) and the consequential proceedings, depriving a person of his property, arising therefrom. It was accordingly observed that "commission of an offence" is one of the requisite ingredients for passing an order of confiscation and an order of confiscation should not be passed automatically. The relevant passage is reproduced below:

"26. An order of confiscation of forest produce in a proceeding under Section 59-A of the Act would not amount either to penalty or punishment. Such an order, however, can be passed only in the event a valid seizure is made and the authorized officer satisfies himself as regards ownership of the forest produce in the State as also commission of a forest offence. An order of confiscation is not to be passed automatically, and in terms of sub-section (3) of Section 59-A a discretionary power has been conferred upon the authorized officer in relation to a vehicle. Apart from the ingredients which are required to be proved in terms of subsection (3) of Section 59-A by reason of the proviso appended to Section 59-B, a notice is also required to be issued to the owner of the vehicle and furthermore in terms of sub-section (2) thereof an opportunity has to be granted to the owner of the vehicle so as to enable him to show that the same has been used in carrying forest produce without his knowledge or connivance and by necessary implication precautions therefor have been taken."

19. Insofar as the submission of the State Counsel that the burden of proof is on the truck owner in the process of confiscation, we must observe that Section 13A of the 2004 Act, which shifts the burden of proof, is not applicable for the confiscation proceedings but for the process of prosecution. By virtue of Section 13A of the 2004 Act, the burden on

the State authority to legally justify the confiscation order, cannot be shifted to the person facing the confiscation proceeding. The contention to the contrary of the State’s counsel, is accordingly rejected.”

It is submitted on behalf of learned counsel for the petitioner that petitioner shall be contended if penalty is reduced to its minimum.

Having heard learned counsel for the parties, we modify the order dated 04.08.2022 passed by the Additional Chief Secretary, Government of Bihar in Revision Case No. 186/2022 only to the extent that the premises in question be released upon payment of penalty of Rs. 1,00,000/- (Rs. One lakh only).

The instant petition stands disposed of with the aforesaid modification in the impugned order.

(Sanjay Karol, CJ)

(S. Kumar, J)

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