

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3212 of 2023

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Mithalesh Gupta, Son of Parasnath, Resident of Village - Shivdaspur,
Manuadih Bazaar, P.S - Manuadih, District - Varanasi, Uttar Pradesh -
221103.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Excise,
Government of Bihar, Patna.
2. The District Magistrate, Patna (Bihar).
3. The Superintendent of Police, Patna (Bihar).
4. The SHO, Rajeev Nagar Police Station, Patna (Bihar).

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Santosh Kumar, Advocate
		Mr. Munish Kumar, Advocate
For the Respondent/s	:	Mr. Kumar Manish, SC-5

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE MADHURESH PRASAD)

Date : 05-07-2023

1. The petitioner is aggrieved with the seizure of his vehicle (*Hyundai Verna*) bearing Registration No. UP65EN-5612, Chassis No. MALC841GTNM348197, Engine No. G4FLNV375869.

2. An FIR was registered on 02.12.2022 as Rajeev Nagar P.S. Case No. 642 of 2022, on seizure of the vehicle for reason of recovery of 100 ml of foreign liquor from the vehicle.

3. Chapter-VI of the Bihar Prohibition and Excise



Act, 2016 (hereinafter referred as “Act”) deals with offences and penalties. Section 30 of the Act provides the penalties for unlawful manufacture, import, export, transport, possession, sale, purchase, distribution, etc. of any intoxicant or liquor. The presumptive nature of the penal provisions is apparent from Section 32. Sections 30 and 32 of the Act, therefore, are the most relevant provisions applicable in the instant case for better appreciation of Rules 12A and 12B of the Bihar Prohibition and Excise Rules, 2021 (hereinafter referred as “Rules”). Sections 30 and 32 of the Act reads as follows:-

“30. Penalty for unlawful manufacture, Import, export, transport, possession, sale, purchase, distribution, of intoxicant or liquor.-- Whoever, in contravention of any provision of this Act or of any rule, regulation, order made, notification issued thereunder, or without a valid license, permit or pass issued under this Act, or in breach of any condition of any license, permit or pass renewed or authorisation granted thereunder-

- (a) Manufactures, possesses, buys, sells, distributes, collects, stores, bottles, imports, exports, transports, removes or cultivates any intoxicant, liquor, hemp; or*
- (b) Constructs or establishes or works in any manufactory, distillery, brewery or warehouse; or*
- (c) Manufactures, uses, keeps or has in his possession any material, utensil, implement or apparatus, or uses any premises, whatsoever, for the purpose of manufacturing any intoxicant or liquor; or*
- (d) Manufactures any material or film either with or*



without the State Government logo or logo of any State or wrapper or any other thing in which liquor or intoxicant can be packed or any apparatus or implement or machine, for the purpose of packing any liquor or intoxicant; or

(e) Removes any liquor or intoxicant from any distillery, brewery, warehouse, other place of storage licensed, established, authorized or continued under this Act; or

(f) Manufactures, possesses, sells, distributes, bottles, imports, exports, transports or removes, any preparation made with or without the use of any intoxicant or liquor, which can serve as an alcohol or a substitute for alcohol and is used or likely to be used or consumed for the purposes of getting intoxicated;

shall be punishable with imprisonment for the term which may extend to life and with fine which may extend to ten lakh rupees.

Provided that the punishment:

(a) For the first offence shall not be less than five years imprisonment and fine of not less than one lakh rupees, and

(b) For the second and subsequent offences shall not be less than ten years rigorous imprisonment and fine of not less than five lakh rupees.

32. Presumption as to commission of offence in certain cases.—*(1) In prosecution of an offence under this Act, the accused person would have to account for the possession of any liquor, intoxicant, material, utensil, implement or apparatus involved in manufacture or storage of such liquor.*

(2) In the event of a failure to offer a satisfactory explanation, there shall be a presumption that the accused person is guilty of the commission of such offence, unless



proved otherwise.

(3) Where any equipment, machinery, animal, vessel, cart, vehicle, conveyance or any premises are used in the commission of an offence under this Act, and are liable to confiscation and/or to be sealed, the owner or occupier thereof would need to account satisfactorily, and in the absence of a satisfactory explanation the presumption that accused person committed the offence shall arise, unless otherwise.”

4. Having considered the relevant statutory provisions, this Court would consider their effect and applicability to the facts of the instant case wherein the alleged quantum of recovery of intoxicant or liquor is a residual 100 ml in a bottle of 750 ml of Ballantine's Finest Blenders Scotch Whiskey. As per allegation in the FIR, two persons were in the vehicle and both were in an inebriated condition. One of the named accused namely Ashutosh Kumar is the petitioner's cousin who, as per petitioner's case, had taken his vehicle on the pretext of medical emergency for taking his ailing mother to Hospital for treatment. The petitioner (owner of the vehicle), even as per prosecution case, was not in the vehicle at the time of alleged recovery.

5. The minuscule quantum of alleged intoxicant/liquor recovered from beneath the driving seat of the vehicle in question cannot, by any stretch of imagination, be



considered to constitute the offence of manufacture, import, export, transport, sale, purchase or distribution of any intoxicant or liquor. The FIR also does not allege commission of any of these offences. The offence, relevant to the present seizure/confiscation of the vehicle, is possession of 100 ml liquor/intoxicant, residual in a bottle of 750 ml capacity, which was lying beneath the driving seat of the vehicle. The other allegation regarding the two persons being in an inebriated condition is not relevant for the purposes of the issue of seizure/confiscation of the petitioner's vehicle.

6. Since the consequence of seizure/confiscation is based on possession, the provisions of Section 32 of the Act, noted above, assume great significance. Section 32 of the Act contemplates giving of an opportunity to the accused person to account for the possession. Only if the explanation offered is not found satisfactory, the presumption of guilt of possession arises. Such opportunity is by legislative intent, and is required to be given effect to by specifying the procedure for such opportunity "to offer a satisfactory explanation" to effectuate the intent and mandate of Section 32 of the Act, which has imbibed in itself one of the most cherished and avowed principles of fairness, namely the principles of natural justice.



7. The Authorities while framing the Rules under the rule making power contained in Section 95 of the Act have not provided any procedure to offer an opportunity for explanation to a person allegedly found in possession of intoxicant or liquor. The State Government till date has not taken any steps for giving effect to the legislative intent in Section 32 of the Act.

8. This Court would consider it relevant to note at this juncture that the opportunity of offering an explanation by the legislature in Section 32 of the Act appears to be in recognition of the fact that the State of Bihar is a unique island of total prohibition surrounded by bordering States and a neighbouring Country wherein there is no such total prohibition. The sale, consumption, transportation, etc. in these States is regulated and not banned altogether. In the State of Bihar also there are provisions in Chapter III and IV of the Act for grant/renewal of permits/licenses for manufacturing, storage, carrying intoxicants and transportation of the same, etc. Thus the Act, contemplates giving of an opportunity to a person found in possession of intoxicant or liquor to offer a satisfactory explanation in support of alleged possession.

9. We, therefore, are of the opinion that the legislative requirement of offering an opportunity for explanation to an



accused specified in Section 32 of the Act, in the interest of justice and fairness is required to be given effect to by this Court, being guided by settled principles of fairness, proportionality and non-arbitrariness. In absence of any procedural prescription in the Rules, this Court must ensure fairness in terms of Section 32 of the Act, and on a case to case basis, having regard to the unique facts and circumstances of the case.

10. In the instant case, it is apparent from the FIR that no such opportunity has been granted to the accused persons for offering any explanation. The quantum of recovery is also a minuscule 100 ml.

11. The provision under Rule 12A(2) of the Rules speaks of a discretion conferred on the District Collector to decide the penalty for release of the vehicle having regard to the quantity of intoxicant recovered, involvement of vehicle owner, and last insured value of the vehicle. The penalty cannot be less than 10 % of the insured value of the vehicle and more than 5,00,000/- (Five lakhs).

12. In the above circumstances, we must consider the minimal quantity recovered, along with that fact that authorities have not considered whether there was any involvement of the



petitioner (vehicle owner); which could have been done only by allowing the petitioner an opportunity as per mandate in Section 32 of the Act requiring giving of an opportunity to offer explanation. Thus in our opinion the seizure and confiscation of the vehicle is unsustainable.

13. We accordingly direct that if a certified copy of this judgment is produced before the District Collector, the vehicle shall be released.

14. Writ application is disposed of.

15. The above direction shall apply if the vehicle has not already been auctioned.

(Madhuresh Prasad, J)

I agree
Chakradhari Sharan Singh, J:

SUMIT/-

(Chakradhari Sharan Singh, J)

AFR/NAFR	AFR
CAV DATE	28.03.2023
Uploading Date	01.08.2023
Transmission Date	NA

