

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16279 of 2022

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Sanjay Kumar @ Sanjay Pasi @ Sanjay Choudhary s/o Late Shiv Narayan Pasi, R/o Vill- Khajurwani, Ward No. 25, P.S.- Gopalganj, District-Gopalganj.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise and Prohibition Department, Bihar, Patna.
2. The Additional Chief Secretary, Excise Department, Govt. of Bihar, Patna.
3. The Excise Commissioner, Head Quarter Bihar, Patna.
4. The District Magistrate, Gopalganj.
5. The Superintendent of Police, Gopalganj.
6. The Inspector of Police-cum-S.H.O., Town P.S.- Gopalganj.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Mayank Mohan, Advocate
		Mr. Adarsh Ranjan, Advocate
For the Respondent/s	:	Mr. Vivek Prasad (GP-7)

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 26-04-2023

The petitioner is aggrieved with the confiscation proceedings taken against his property i.e. house bearing holding no. 211A, Ward No. 25 under Gopalganj Nagar Parishad, appertaining to Khata No. 63, Khesra No. 66 and 67 having an area of 8 decimal (2 Katha 3 dhur as per local measurement) obtained through a registered deed from the resources of the joint family of the petitioner.



2. A house was also built on the said piece of land which was subject to confiscation by the District Magistrate, Gopalganj, the 4th respondent herein. The petitioner claims to be the exclusive owner of the land and the building along with his family and prays for release of the same to him absolving this building and the property from the confiscation proceedings.

3. Learned counsel for the petitioner argued that the genesis of the case is from P.S. Case No. 347 of 2016 registered at the Gopalganj Town Police Station on 18.08.2016. It is revealed from the F.I.R. that on an information received the police party raided the house at 00:10 A.M. especially after being informed that there were persons taken to the hospital from the house, with recurrent bouts of vomiting and are hospitalized in a critical condition, resulting also in the death of some of them. It was alleged that the family of the petitioner had indulged in illicit trade of liquor and the raid resulted in seizure of 30 litres of illicit country made liquor and 30 litres of spurious liquor. The house of the petitioner was also raided from where 30 litres of illicit liquor, four bottles of English wine, each containing 180 ml. was also recovered. The petitioner along with other family members were arrested and an F.I.R. dated 18.08.2016 is registered, which is produced as



Annexure-1. The accused were implicated in the crime, some of whom were granted death sentence against which Death Reference No. 5 of 2021 was considered along with Cr. Appeal (DB) No. 351 of 202, filed by those who were awarded with a lesser sentence. A Division Bench of this Court by judgment dated 13.07.2022 acquitted the accused setting aside the conviction and order of sentence in the Criminal Appeal and rejected the Reference made for confirmation of death sentence. Annexure-2 is the judgment produced. The petitioner had also moved another writ petition before this Court as CWJC No. 1733 of 2018 wherein interim release of property was granted.

4. We have perused the translated copy of the F.I.R. as produced by the Registry and the seizure-cum-search list which are produced along with it. The Collector, Gopalganj has passed the Confiscation Order dated 15.11.2016 (Annexure-A). The District Collector noticed the contention of the Excise Department that as per Section 62 of the Bihar Prohibition & Excise Act, 2016 on recovery of liquor or any narcotic substance from a premises, the same can be sealed and a report sent to the Collector for confiscation of the premises. Confiscation is permitted under Section 58(2) on the satisfaction of the District Collector from the records that a



crime has been committed under the Act. The District Collector came to the conclusion on the basis of the arguments and the available documents that there was an offence committed within the sealed premises under the Act and issued the Confiscation Order dated 24.08.2016. It is very relevant that the offence is said to have been committed on 16.08.2016 while the Bihar Prohibition and Excise Act, 2016 was notified only on 02.10.2016. However, the Bihar Excise (Amendment) Act, 2016 which came into force in March, 2016, amending the Bihar Excise Act, 1915 contained analogous provisions for confiscation.

5. But, it has to be pertinently noticed that the petitioner and the other accused were acquitted in the criminal case registered. We have to specifically notice the infirmities found by the Division Bench after a careful scrutiny of the evidence led at the criminal trial. The conclusions which appear in Paragraph 118 of the judgment are extracted here under:-

“(a) In spite of receipt of a definite information regarding the commission of a cognizable offence, the S.H.O. of the Gopalganj Town Police Station failed to register FIR.

(b) A major part of the investigation was carried by the S.H.O. even before the registration



of the FIR.

(c) The institution of the FIR and that too not on the basis the first-hand information received from Bandhu Ram, but on the basis of self-statement of the S.H.O. creates suspicion about the initiation of the criminal prosecution in the present case.

(d) The institution of the FIR after an inordinate and unexplained delay gives rise to the presumption that the same was instituted after due deliberations and consultation.

(e) Though Bandhu Ram was the first person who disclosed about the entire incident to the S.H.O., he is neither a witness to the charge sheet nor the Investigating Officer could meet him during the entire investigation.

(f) Though the prosecution has tried to make out a case that 19 persons died due to consumption of poisonous liquor manufactured and supplied by the accused persons, none of the witnesses examined during trial disclosed the name of any deceased.

(g) The prosecution has failed to bring on record the postmortem report of the persons, who allegedly died to consumption of liquor.

(h) It is the case of the prosecution that Bandhu Ram and others, who were critically ill



after the consumption of spurious liquor were being treated at the Sadar Hospital, Gopalganj, but neither any medical report of their treatment was produced before the Trial Court nor the doctors, who examined them were examined during trial.

(i) Though the witnesses examined during trial stated in their testimonies that the place of occurrence was a densely populated village, no local person was made witness to the searches and seizures of incriminating materials made from the houses of the accused-appellants.

(j) Since the two seizure list witnesses belong to different villages their presence in the village at the time of searches and seizures appears to be highly improbable.

(k) Out of the two seizure list witnesses, one was not examined by the prosecution and the another one was examined as a defence witness.

(l) No independent witness was examined on behalf of the prosecution.

(m) Though all witnesses examined on behalf of the prosecution are police personnel, they have contradicted each other in material particular.

(n) The FSL report was not supplied to the accused-appellants either before the framing charge in compliance of Section 207 Cr.P.C. or after the framing of charges during the trial.



(o) The essential ingredients of the offences for which the charges were framed by the Trial Court were not proved during the trial.

(p) There is no oral evidence regarding the incriminating articles seized from the respective houses of the appellants.

(q) The so-called incriminating materials seized in connection with the case was not produced before the court.

(r) There is no destruction report of the seized materials.

(s) It is not known where the seized materials were kept after the seizure.

(t) There is no evidence to suggest that any sample was drawn on the spot of recovery of any intoxicant or liquor.

(u) There is no evidence regarding the house or the place from where the materials seized were sent to the FSL for chemical examination.”

6. A reading of the aforesaid conclusions would clearly cast a suspicion on the very offence charged of recovery of illicit liquor and the responsibility of the petitioner and his family for the hooch tragedy which is said to have occurred in the premises of the petitioner. We also see from the confiscation order which is produced along with the F.I.R. that there is no



consideration of the materials placed before the Confiscating Authority and in any event there could not have been a confiscation made under the Bihar Prohibition and Excise Act, 2016 for an offence committed prior to its enforcement. No reference to the Bihar Excise (Amendment) Act, 2016 is made by the District Collector, showing clear non-application of mind. Normally, we would have remanded the matter for fresh consideration. But here, in the teeth of the order in the Cr. Appeal, there is no warrant for remand. We hence, allow the writ petition and absolve the subject premises from the confiscation proceedings. The order of confiscation produced as Annexure-A along with the counter affidavit is set aside.

7. The writ petition stands allowed.

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

P.K.P./Anushka

AFR/NAFR	
CAV DATE	
Uploading Date	02.05.2023
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