

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1772 of 2023

In
Criminal Writ Jurisdiction Case No.1177 of 2022

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Rambabu Prasad, Son of Budhai Sah, a Resident of Village-Kadipur, P.S.-
Khaira, District-Saran

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise Department,
Govt. of Bihar, Patna.
2. The District Magistrate/Collector, Saran, Chapra.
3. Deputy Collector, Land Reforms, Sadar Chapra, Saran
4. The Superintendent of Police, Saran, Chapra.
5. The Excise Superintendent, Saran, Chapra.
6. The Sub-Divisional Police Officer, Chapra, Saran.
7. The Station House Officer, Khaira, Saran.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Harish Kumar, Advocate
For the Respondent/s : Mr. Kumar Manish (SC-5)

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE MADHURESH PRASAD)

Date : 26-04-2023

The petitioner is concerned with release of the premises,
that is, petitioner's room situated at plot No. 233, Khesra No.
721 measuring 10 x 14 feet, seized in connection with Khaira
(Nagra) PS Case No. 111 of 2022 registered for alleged offences
under Section 30(a) of the Bihar Prohibition and Excise Act.

2. As per First Information Report (FIR), on 17.03.2022
there was alleged recovery of two bottles of 180 ML each of



Radico 8 PM English wine. 42 days thereafter, on 27.04.2022 the premises from which the alleged recovery was made, were sealed. That confiscation proceedings are pending before the Deputy Collector Land Reforms, Sadar Chapra in confiscation case number 378 of 2022.

3. Copy of the records of confiscation proceedings has been annexed as Annexure - 4 to the writ petition. The same seems to have been initiated on 28.05.2022. It is not in dispute that till date confiscation order has not been passed.

4. Learned counsel for the petitioner has submitted that as per Rule 12 of the Bihar Prohibition and Excise (Amendment) Rules, 2022 (hereinafter referred to as '2022 Rules') sealing of the premises, from which there is alleged recovery of illicit liquor, is required to be done within 24 hours from the institution of FIR. The petitioner's premises have been sealed after 42 days of alleged recovery. The same is based on extraneous considerations, which is manifest from the long inordinate delay without any justification, whatsoever. In fact, the petitioner has been made a scapegoat due to extraneous considerations by alleging recovery of a minuscule quantity (360 ML) from within the premises of the petitioner's shop. In view of the procedural lapse in sealing of the premises, this



Court should not permit the authorities to inflict the severe consequence of sealing/confiscation of the premises in question and direct for release of the same without any delay.

5. This Court earlier had granted time to the respondents for filing counter affidavit, which have been filed. It is not in dispute that sealing of the petitioner's premises is 42 days after alleged seizure/recovery of the illicit liquor.

6. The State, however, has taken a stand that the prescription in Rule 12, requiring sealing of the premises within 24 hours is contained in the 2022 Rules, which have come into effect from the date of its notification, that is, 05.04.2022. Rule 12, therefore, cannot be made applicable to the date of seizure of liquor, that is, 17.03.2022. In view of the Act, recovery of illicit liquor from the petitioner's shop entails the consequence of seizure/confiscation and the petitioner cannot be permitted to raise any objection to such seizure/confiscation under the statute.

7. On consideration of the rival submissions, this Court would find that as on the date of alleged recovery of illicit liquor from the petitioner's premises, that is, 17.03.2022, Section 62 of the Act, that is, prior to amendment by Bihar Act 03 of 2022 on 01.04.2022, was applicable, which 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 (emphasis ours) 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."

8. Section 62 clearly provides the discretion to the excise officer or any police officer, not below the rank of Sub Inspector, to “*immediately*” seal the premises from where any liquor or intoxicant is found or which has been used for committing any offence under the Act.

9. The prescription “*immediately*” in Section 62 of the Act; or within 24 hours in the 2022 Rules is with a purpose. The recovery of illicit liquor from any premises as per Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as ‘Act’) makes the premises liable for confiscation. Since such



stringent consequences follow as a result of alleged seizure of illicit liquor, to obviate any false implication based on extraneous considerations, the Act as well as the 2022 Rules prescribe for sealing of the premises within 24 hours. Otherwise, it would be open to any seizing authority under the Act to seal any premises arbitrarily and at his own sweet will and visit a person with the extreme consequence in a most casual and arbitrary manner, which cannot be countenanced.

10. The expression "*immediately*", thus by no stretch of imagination can be conceived to intend sealing of premises after 42 days. The admitted sealing of petitioner's premises, 42 days after the alleged seizure of intoxicant, therefore, is unsustainable and in contravention of the statutory provision contained in Section 62 of the Act, as it existed on the date of the alleged recovery of intoxicants from the petitioner's premises.

11. This Court would also consider the plea on behalf of the State authorities regarding Rule 12 coming into force with effect from 05.04.2022, that is, after alleged recovery of illicit liquor from the petitioner's shop. Rule 1(3) provides as follows:-

"(3) It shall extend to the whole of the State of Bihar and shall apply to all pending cases."



12. As on the date of coming into force of this 2022 Rules, the case in question in these proceedings, arising out of alleged seizure and lodging of FIR on 17.03.2022 was pending. As per Rule 1(3) of the 2022 Rules, the same became applicable to the proceedings arising out of Khaira (Nagra) PS case No. 111 of 2022 with effect from 05.04.2022. Thus the words "*immediately*", employed in the Act, received further clarity and definiteness with the Rules of 2022. As such the petitioner's premises have been sealed 22 days after coming into force of the 2022 Rules. The sealing of the premises is, therefore, not only contrary to the provisions contained in the Section 62 of Act, noted above; but the same is also in contravention of Rule 12 of the 2022 Rules. The delay is contrary to the statutory provisions and the length of delay, noted above, is also shocking to the conscience of the Court. The same when juxtaposed to the severe consequence of seizure and confiscation, is required to be viewed seriously and cannot be dismissed as a minor procedural infirmity. The sealing is thus delayed and arbitrary. Another serious infirmity is that sealing is without any scientific report certifying the recovery of alleged 360 ML of liquid to be an intoxicant or liquor.

13. Having found the seizure to be unsustainable on the



above grounds, we would also observe that the alleged quantum of recovery from the premises in question can only be termed as trifling when the same is considered having regard to the extreme penal consequences.

14. We, therefore, restrain the respondent no. 3 from proceeding further for confiscation in Confiscation Case No. 378 of 2022. We also direct that the petitioner’s premises be released forthwith upon receipt/production of a copy of this order, subject to verification of the petitioner’s identity *vis-a-vis* his ownership of the premises in question, which must be completed within two weeks from the date of receipt/production of a copy of this order alongwith an application for satisfying Respondent No. 3 of the petitioner’s identity, *vis-a-vis* ownership of the premises in question.

15. Writ petition is allowed

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

SUMIT/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	10.05.2023
Transmission Date	NA

