

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16764 of 2017

Shivpatiya Kunwar, Wife of Late Shiv Chaudhary, resident of Village- Marar Dargah, P.S.- Parsa, District- Saran.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
2. The Principal Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna
3. The District Magistrate-cum- Collector, Saran at Chapra.
4. The Sub-Divisional Officer, Sadar, Chapra, Saran.
5. The Superintendent of Excise, Chapra, District- Saran.
6. The Circle Officer, Parsa, District- Saran.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Prashant Bhushan, Advocate
For the Respondent/s : Mr. Akash Chaturvedi, AC to SC 11

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ARUN KUMAR JHA)

Date : 27-09-2023

The petitioner has filed the instant writ petition seeking the following relief(s):-

“(i) To issue an appropriate writ/order/direction/, in the nature of writ of certiorari quashing the order dated 11.8.2017 passed by the Collector, Saran, (Respondent No.3) in confiscation Case No. 78 of 2017 by which the Collector, Saran in purported exercise of power under Section 57 and 58 of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as “the Act”) has ordered to Respondent No.4 to confiscate the residential house of the



petitioner and further directed the respondent No. 4 to sale the confiscated house through open public bid and to deposit the sale amount in the Government Treasury (as contained in Annexure-5).

(ii) To issue and appropriate writ/order/direction, in the nature of mandamus directing the respondents to immediately hand over the possession of sealed residential house to the petitioner.

(iii) To any other relief or reliefs for which the petitioner is entitled to.”

2. Briefly stated, the case of the petitioner is that Parsa P.S. Case No. 202 of 2016 was registered on 10.12.2016 for an occurrence of the same day, wherein the police party recovered 2.5 litres of country made liquor from the house of the petitioner. Subsequently, a confiscation proceeding was started vide Confiscation Case No. 78/2017 which resulted in the confiscation of the house of the petitioner by the District Magistrate, Saran at Chapra. The said order of the District Magistrate was challenged before this Court by the petitioner on a number of grounds inter alia, that the order has been passed against the established provisions of law under the Bihar Prohibition and Excise Act, 2016. Further, the order has been passed by the concerned District Magistrate in a mechanical manner.

3. Learned counsel appearing on behalf of the petitioner



submits that a Co-ordinate Bench of this Court vide order dated 23.11.2017, directed the District Magistrate-cum-Collector, Saran to ensure that the house in question was unsealed and possession was handed over to the petitioner subject to the condition that the petitioner would not alienate or deal with the house in question in any manner so as to prejudice the right of the State in confiscation proceeding. Learned counsel further submits that the order of the District Magistrate-cum-Collector, Saran is arbitrary since he has not taken into consideration the fact about involvement of the petitioner and also regarding the house being a joint house inhabited by the sons of the petitioner. Learned counsel further submitted that confiscation of the property and sale order dated 11.08.2017 passed by the District Magistrate-cum-Collector through public auction is too harsh since the petitioner is not having any other dwelling house and the alleged recovery is of a meagre quantity of only 2.5 litres of liquor, that too, of country made liquor. Learned counsel further submitted that the petitioner has suffered a lot since the F.I.R. was registered on 10.12.2016 and about seven years have elapsed since then. Learned counsel further submitted that considering the facts and circumstances of the case, the order dated 11.08.2017 passed by the District Magistrate-cum-



Collector, Saran at Chapra in Confiscation Case No. 78 of 2017 be quashed and the property, i.e., the house of the petitioner be ordered to be handed over to her. Learned counsel further submits that a letter dated 27.06.2017 was forwarded by the Superintendent of Police, Saran to the District Magistrate for confiscation of the property which was after much delay. Learned counsel further submits that it is not forthcoming from the record whether the seized contraband was sent to the laboratory for its testing and this fact was also not ascertained by the District Magistrate before ordering for its destruction.

4. Learned counsel appearing on behalf of the State vehemently opposed the submission made on behalf of the petitioner. Learned counsel for the State submits that the petitioner has got the remedy of appeal and thereafter revision against the impugned order. Learned counsel further submits that the petitioner herself is an accused in this case and recovery of 2.5 litres of country made liquor was produced in the premises. So, the premises has been rightly sealed and order of confiscation has been passed after following due procedure. Learned counsel for the State has raised preliminary objection relating to the maintainability of the present petition against the confiscating authority order to the extent that petitioner has



statutory remedy of appeal under Section 92 of the Bihar Prohibition and Excise Act, 2016.

5. Perused the records.

6. It is to be noted that this Court has entertained the present petition in the year 2017 while staying the operation of the confiscating authority's order. Therefore, it is not proper to relegate the petitioner to the appellate authority. Further it is to be noted that as on the date of confiscating authority's order, i.e., 11.08.2017 Bihar Prohibition and Excise Rules, 2021 have not come into effect and there is non-compliance of Section 92(3) of Act, 2016 insofar as framing of Rule to prescribe procedure before the appellate authority. This may also assist the petitioner in not exhausting the statutory remedy of appeal. The circumstances do not warrant the petitioner to approach the appellate authority.

7. Having considered the rival submissions, certain facts are undisputed. The lodging of FIR on 10.12.2016 and petitioner being an accused in this case is not disputed. It is pertinent to produce here the relevant provisions with regard to confiscation and sale of items seized when any offence under the Bihar Prohibition and Excise Act, 2016 is committed. Relevant provisions are Sections 56, 57 & 58 of the Bihar Prohibition and



Excise Act, 2016 which read as under:-

“56. Things liable for confiscation.—
Whenever an offence has been committed, which is punishable under this Act, following things shall be liable to confiscation, namely -

(a) any intoxicant, liquor, material, still, utensil, implement, apparatus in respect of or by means of which such offence has been committed;

(b) any intoxicant or liquor unlawfully imported, transported, manufactured, sold or brought along with or in addition to, any intoxicant, liable to confiscation under clause (a);

(c) any receptacle, package, or covering in which anything liable to confiscation under clause (a) or clause (b), is found, and the other contents, if any, of such receptacle, package or covering;

(d) any animal, vehicle, vessel or other conveyance used for carrying the same.

(e) any premises or part thereof that may have been used for storing or manufacturing any liquor or intoxicant or for committing any other offence under this Act.

Explanation: The word “premises” include the immoveable structure, all moveable items within the structure and the land on which the premises is situated.

57. Power of Collector, etc., to order sale or destruction of articles before confiscation.—

If the article in question is liable to speedy and natural decay, or if the Excise Commissioner, Collector, Court or the officer authorized by the State Government in this behalf is of opinion that the sale would be in public interest or the sale would be for the benefit of the owner, he Excise Commissioner, Collector, Court or the officer may, at any time, before



passing the Order of confiscation, direct such articles to be sold and proceeds be deposited with the Government:

Provided that, where anything is liable to speedy and natural decay, or is of trifling value or which can be put to misuse, the Collector or the officer concerned, may, order such thing to be destroyed, if in its or his opinion such order is expedient in the circumstances of the case.

58. Confiscation by District Collector. - (1) *Notwithstanding anything contained in this Act or any other law for the time being in force, where anything liable for confiscation under this Act is seized or detained under the provisions of this Act, the officer seizing and detaining such property shall, without any reasonable delay submit a report to the District Collector who has jurisdiction over the said area;*

(2) On receipt of the report under sub-section (1), the District Collector if satisfied that an offence under this Act has been committed, may, whether or not prosecution is instituted for the commission of such an offence and whether or not a case is pending before any court, order confiscation of such property;

(3) The Collector shall, before passing an order under sub-section (2), give a reasonable opportunity to the person concerned, of being heard;

(4) While making an order of confiscation under sub-section (2), the District Collector may also order that such of the properties which the order of confiscation relates, which in his opinion cannot be preserved or are not fit for human consumption, be destroyed. Whenever any confiscated article has to be destroyed in conformity with these provisions, it shall be destroyed in the presence of a Executive Magistrate or officer ordering the confiscation or forfeiture, as the case may be, or in the presence of the Excise Officer not



below the rank of a Sub-Inspector;

(5) While making an order of confiscation under sub-section (2), if the District Collector is of the opinion that it is expedient in the public interest to do so, he may order the said property or any part thereof to be sold by public auction or dispose of departmentally and proceeds deposited with the State Government;

(6) The District Collector shall submit a full report of all particulars of confiscation to the Commissioner of Excise within one month of such confiscation.”

8. Perusal of Section 58 shows whether anything liable for confiscation under this Act is sealed or detained under the provisions of this Act, the authority seizing and detaining such property shall without any reasonable delay submit a report to the jurisdictional District Collector. Obviously, from the dates and events of the present case, there is much delay in sending the report to the District Magistrate-cum-Collector and it appears to be more than six months.

9. The FIR was registered on 10.12.2016 and the report was sent by Superintendent of Police for confiscation vide letter dated 27.06.2017. This delay will go to the root of the matter and vitiate the whole confiscation proceeding. Further the seized article was not sent to the laboratory for testing. It is very surprising that the confiscation orders were passed



without ascertaining whether the seized contraband was liquor or not. On both counts the order of the confiscating authority is not sustainable. Taking note of certain facts and circumstances, recently we have passed a detailed order dated 14.09.2023 in CWJC No.17894/2022 (*Sunita Sinha vs. The State of Bihar and Ors.*) deprecating the tendency of the authorities to confiscate the premises found involved in trade of illicit liquor in an arbitrary manner and putting unreasonable terms and conditions for its release and we further pointed out the lacunae in the relevant provisions of law regarding seizure, sealing and confiscation of premises. Apparently, the case of the petitioner is covered under one of the illustrations given by us.

10. Having considered our earlier decision (supra) and further considering the delay in sending the report to the jurisdictional District Magistrate-cum-Collector and also there being no lab report about nature of contraband, the petitioner has made out a case in her favour. Hence, the order dated 11.08.2017 passed by the District Magistrate-cum-Collector, Saran at Chapra in Confiscation Case No. 78 of 2017 stands set aside and the instant writ petition is allowed.



11. The concerned respondent is hereby directed to handover the subject matter of property to the petitioner forthwith.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

Balmukund/-
Himanshu/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.10.2023
Transmission Date	NA

