

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.8410 of 2023**

Janeshwar Singh Son of Chattu Singh Resident of Village- Gopi Bigha, Police Station- Dehri Town, District- Rohtas.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Additional Chief Secretary, Prohibition Excise and Registration Department, Government of Bihar, Patna.
3. The Excise Commissioner, Prohibition Excise and Registration Department, Government of Bihar, Patna.
4. The Collector-cum-District Magistrate, Rohtas.

... .. Respondent/s

**Appearance :**

For the Petitioner/s : Mr.Parijat Saurav, Advocate  
For the Respondent/s : Mr.Vikash Kumar (SC-11)

**CORAM: HONOURABLE THE CHIEF JUSTICE**  
**and**  
**HONOURABLE MR. JUSTICE PARTHA SARTHY**  
**CAV JUDGMENT**  
**(Per: HONOURABLE THE CHIEF JUSTICE)**

**Date : 29-08-2024**

The petitioner herein is concerned with his premises, which has two rooms; abandoned, situated at Thana No. 155, Mauza-Jamuar, Khata No. 387, Plot No. 596 which is being proceeded with for confiscation under the Bihar Prohibition and Excise Act, 2016 (for brevity 'Act of 2016') read with Bihar Prohibition and Excise Rules, 2021 (for brevity 'Rules of 2021'). The petitioner has raised a challenge against the provisions which impose the penalty of confiscation on the contraband as also the vehicle or premises in which liquor is



stored against the prohibition as imposed by the Act of 2016, within the State of Bihar. In addition to the challenge against the provisions, the petitioner also has contention on the factual aspects; which is of the petitioner himself having pointed out the storage of liquor by another person, in the abandoned premises, which was seized as per a list, in which the petitioner had put his signature as a witness. It was the petitioner himself who informed the Police; which he did, on the basis of Section 54 of the Act of 2016, is the compelling argument.

2. Later an FIR was registered against a person who is said to have stored the liquor in the premises, as seen from the first information recorded; which accused was pointed out by the locals themselves. This case was later closed without filing a charge-sheet and a fresh FIR registered against the petitioner after two years. The petitioner's contention is also that, it is a retaliatory measure initiated by the accused who was arrayed in the earlier FIR, who not only got himself extricated from the case, but implicated the petitioner herein. The criminal case is pending against the petitioner and he has suffered more than one year of imprisonment, till he was granted bail as per Annexure-

3. The petitioner in the present writ petition is concerned with the confiscation proceedings taken by the Collector as



confirmed in appeal and revision. The petitioner has challenged the provisions as amended and introduced by the Amended Rules of 2022 which confers a further discretion to the District Collector in the matter of confiscation.

3. We heard learned Counsel Shri Parijat Saurav for the petitioner and Shri Vikash Kumar (SC-11) for the respondents.

4. Before we consider the challenge against the provisions, we would look at the facts and the circumstances under which the confiscation was made, an FIR registered, later closed and a fresh FIR registered. The FIR registered at the time of seizure is produced as Annexure-1, which indicates that the Assistant Sub-Inspector received information over the telephone and proceeded to the premises with the police party. The police party first went to the stone crusher unit of the petitioner and met the petitioner, which probablises the version of the petitioner that it was he who informed the police about the huge stash of liquor in his premises; which he was obliged to do under Section 54 of the Act of 2016. The FIR also records that it is as per his instructions that the house in ruins, adjacent to the eastern wall of the stone crusher unit was searched and cartons of liquor were seized. The total recovery was of 27,360 bottles



of foreign liquor containing 180 ml each, totaling 4924.80 litres. The seizure was witnessed by the petitioner and one another person. It is also stated therein that during investigation, the local people informed the police that the business of buying and selling of liquor was carried on by one Prince Kumar, son of Arun Kumar Yadav, resident of Jamuar Police Station, Dehri Nagar, District-Rohtas along with his associates. It has also been recorded that a week ago, a large consignment of liquor was recovered from trucks and other vehicles at a short distance from where the present seizure was carried out, in which also the involvement of Prince Kumar and his associates were found. This was the circumstance in which the earlier FIR was registered.

5. The seizure list is also annexed with Annexure-1 which indicates that petitioner was one of the witnesses. The FIR was dated 04.01.2019 and after two years on 30.05.2021 by Annexure-2, Prince Kumar was found to be innocent and charge-sheet no. 239 of 2021 was submitted as against the unknown accused who was alleged to be the petitioner himself. As we noticed above, the petitioner was imprisoned for about one year and released on bail later. We are not concerned with the criminal prosecution as of now. We also notice that Section



58 of the Act of 2016 empowers the District Collector to proceed for confiscation, if satisfied of the offence committed under the Act of 2016 whether or not prosecution is instituted or commission of such an offence or whether a case is pending before any Court. Hence, the civil consequence of a confiscation under the Act and Rules of 2021 is independent of the penal consequences that may or may not visit the owner/accused in the criminal prosecution.

6. As of now, the Rules as amended in 2022 provide for release of the confiscated items on payment of penalty as determined by the Collector; which as per the amendment brought about in 2022 also confers discretion on the Collector, while imposing a fine; to have due regard to the financial status of the individual, nature of his involvement in the crime, location of the premises and the quantum of intoxicant recovered, while deciding the quantum of fine to be paid by the individual. We cannot, but find that the provision under sub-rule (2) of Rule 12-B which confers a discretion on the Collector to impose a fine, not below Rs.1 lakh, as empowering the Collector also to release the premises without any penalty at least considering the nature of involvement in the crime.

7. In the present case, the compelling argument of the



learned Counsel for the petitioner is that he had pointed out the stash of contraband in his abandoned premises and it is as per his direction that the police party proceeded to the premises and seized the contraband. The further fact that he had been a witness to the seizure list would also indicate his active participation in the seizure; absolving him from any complicity in the crime.

8. A reading of the FIR; at Annexure-1, the translated copy of which has been produced before us, after supplying a copy to the learned Government Advocate, persuades us to find that the contentions raised by the petitioner regarding his innocence are *prima facie* credible. However, we cannot ignore the criminal proceeding pending against the petitioner; wherein the standard of proof would be proof beyond reasonable doubt while in the confiscation proceedings, it would be preponderance of probability.

9. As of now, the criminal proceeding is pending and the petitioner, in the writ petition, is concerned about his premises against which confiscation proceedings are concluded. The order of the Collector, originally passed and



then on remand has not considered the specific issue of whether the petitioner has any involvement in the crime or not; which in the peculiar facts arising in this case is crucial for determination of the issue. We are of the opinion that the provisions under the amended Rules of 2022 have to be necessarily looked at by the Collector. We, hence, to facilitate consideration as per the Rules, set aside the impugned orders passed in original, in appeal and in revision.

10. The District Collector shall consider the issue afresh specifically considering the objections raised by the petitioner. The petitioner's contention that he has no involvement in the crime has to be looked into and if the same is found, the premises has to be released without any imposition of penalty; and if his involvement is found, the District Collector would have the discretion to impose the fine which also has to be regulated by the other considerations as available in sub-rule (2) of 12B and also the nature and gravity of involvement of the petitioner, if any, in the crime. The petitioner shall give an undertaking before the District Collector that no third-party



rights/interest would be created on the property.

11. In the nature of the orders passed, the learned Counsel for the petitioner agreed that he would not press the contentions against the Rules; but also prays for reservation of liberty to again raise the challenge against the constitutionality of the provisions, if the order passed by the District Collector is prejudicial to the petitioner. The learned Counsel also points out that the contraband recovered was from an abandoned two room premises whereas the total extent of the property was 6 acres 83 decimals of land and even as per the provisions, only that part of the premises need be confiscated as has been specified in Rule 12(5) of the Rules of 2021.

12. Since we are directing reconsideration of the matter under the existing rules, we also leave liberty to the petitioner to raise every challenge made in the present writ petition, if an order prejudicial to his interest is passed.

13. The writ petition is disposed of setting aside the orders impugned, only to facilitate fresh consideration by the District Collector; reserving liberty as sought for by the petitioner. The consideration shall be made by the



District Collector within a period of three months from the date of this judgment after hearing the petitioner. The petitioner shall appear before the District Collector on 10.09.2024.

(K. Vinod Chandran, CJ)

Partha Sarthy, J: I agree

(Partha Sarthy, J)

Anushka/-

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| AFR/NAFR          |            |
| CAV DATE          | 22.08.2024 |
| Uploading Date    | 29.08.2024 |
| Transmission Date |            |

