

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13474 of 2024

1. Govind Kumar @ Govind paswan Sitaram @ Chhuthahru Paswan Resident of Village-Chetharia Peer, Ward No. 15, Police Station Kahalgaon, District-Bhagalpur.
2. Nandu Paswan Son of Sitaram @ Chhuthahru Paswan Resident of Village-Chetharia Peer, Ward No. 15, Police Station Kahalgaon, District-Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of Excise and Prohibition, Government of Bihar, Patna.
2. The Assistant Commissioner, Excise, Bhagalpur.
3. The District Magistrate, Bhagalpur.
4. The Senior Deputy Collector, District Legal Cell, Bhagalpur.
5. The Senior Superintendent of Police, Bhagalpur.
6. The Assistant Superintendent of Police, (Training)-Cum-S.H.O., Kahalgaon, District-Bhagalpur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Ms.Pravina Kumari, Adv.
For the Respondent/s : Mr.Standing Counsel 28

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY)

Date : 04-10-2024

In the instant petition, petitioners have prayed for the following reliefs (s) :-

“(i) For issuance of appropriate order/direction/writ specially in nature



of certiorary setting aside the impugned notice bearing DB No. 101 dated 26.06.2024 issued by the petitioners in Misc. (Excise) Case No. 46 of 2024-25 issued under the signature of Respondent no. 4 whereby and whereunder on the ground that since proposal for confiscation of petitioners' dwelling house has been received from the level of Respondent Senior Superintendent of Police for recovery of wine from their dwelling house in connection with Kahalagaon Police Station Case No. 793 of 2023 instituted under Section 30(a) of Bihar Excise Act seeking explanation why house of petitioners may not be confiscated in view of section 56(C) and 58(2) of Bihar Excise (Amendment) Act 2018 as also directed the petitioners to deposit fine of Rs. 1,00,000/- (Rupees One Lac) within 15 days upon which seized house will be released and since only meager quantity about one and half litre (exact 1.485 litres) foreign liquor was found wrapped in one paper concealed in corner of one of the room in ground floor of common house in which entire families and children of all the brothers and co-sharers are residing in common house and the same was not used for commercial pur-



pose rather might be possible to keep by any of the members for personal consumption and as such initiation of confiscation proceeding is itself not maintainable and consequential impugned notice is itself bad in eye of law and the same is fit to be quashed.

(ii) For issuance of appropriate direction upon the Respondents concerned to release the dwelling house of petitioners and no coercive action may be taken as petitioners are poor persons and not in a position to deposit one Lac rupees as fine for getting the dwelling house officially released from liability to keep 1 ½ litre foreign liquor in house.

(iii) Any other order/orders for granting any other relief/reliefs for which the petitioners are found entitled to in the facts and circumstances of this case.”

2. Briefly stated, the facts of the case is that there is alleged recovery of 1.485 liters of illicit liquor from the house of petitioners. On the basis of aforesaid fact, F.I.R. No. 793 of 2023 dated 08.07.2023 was registered in Kahalgaon P.S. under section 30(a) of the Bihar Prohibition and Excise Act, 2016 and Amendment Act, 2022.

3. Learned counsel for the petitioners submits that



there is alleged recovery of 1.485 liters of illicit foreign liquor wrapped in plastic bag concealed in corner of one room of dwelling house which is common house in which several families are residing and as such meager quantity of liquor was not for commercial purpose, rather it was kept by any individual of common family for the personal consumption, and as such, initiation of confiscation proceeding of entire dwelling house is bad in the eye of law. From perusal of F.I.R. itself, it is evident that two persons are said to have fled away from the place of occurrence after seeing police and police raided the house then from one room situated at first floor of house 1.485 liters of foreign liquor was recovered. He further submits that petitioners were not present either at the time of raid or at the time of alleged seizure and petitioners cannot be held liable for the alleged recovery as the house in question is accommodation of several persons. Learned counsel submits that the dwelling house in question was constructed by ancestors of petitioners which is common house in which entire co-sharers are residing as the land over which the dwelling house in question is standing is not the exclusive property of petitioners, rather it is common ancestral property. For such meager quantity of recovery, fine of Rs. 1 lakh in terms of notice contained in DB. No. 101 dated



26.06.2024 for releasing the dwelling house is arbitrary and not justified.

4. Learned counsel for the respondents submits that in pursuance to order dated 09.09.2024 passed by the Hon'ble Court the Senior Deputy Collector passed order as contained in Annexure-R/C for release of the dwelling house of the petitioners and copy of the order has also been communicated to the petitioners. Petitioners have deposited the fine vide Challan No. 045048 dated 24.09.2024 (Annexure-R/D) and thereafter on 27.09.2024 the house of the petitioners has been unsealed/released.

5. From perusal of the record, it has transpired that there is recovery of a meager quantity of illicit liquor from the dwelling house in question and for recovery of such a meager quantity, direction as contained in Annexure-P/2 to deposit fine of Rs. 1 lakh is totally arbitrary in light of the facts and circumstances of the present case.

6. On 09.09.2024, this Court had passed the following order :

“Respondents are hereby directed to release the subject matter of house, subject to outcome of the present writ petition. In the meanwhile, for mere seizure of 1.5 liters of liquor,



there is proposal for confiscation of house read with direction of the concerned respondents to the petitioners to deposit an amount of sum of Rs. 1,00,000/- (Rupees One Lac). Respondents directing the petitioners to deposit Rs. 1,00,000 (Rupees One Lac) would be harsh. Therefore, petitioners are hereby directed to deposit an amount of sum of Rs. 10,000/- (Rupees Ten Thousand) for the release of the subject matter of house within a period of one week and such arrangement is subject to result of the present petition.”

7. In the counter affidavit filed on behalf of respondents, it has been admitted that in pursuance of the aforesaid direction of the Court petitioners have already deposited the fine amount of Rs. 10,000/- and the dwelling house in question has already been unsealed/released.

8. We are conscious of the fact that alleged recovery is meager quantity and the aforesaid order was passed while invoking extra ordinary jurisdiction under Article 226 of the Constitution of India for the reasons that unnecessarily petitioner shall not be subjected to various proceedings like Rule of 12B of the Bihar Prohibition and Excise Rules, 2021 read with Sections 58, 92 and 93 of the Bihar Prohibition and Excise Act, 2016, for a trivial issue relating to seizure of 1.5 liters of illicit



liquor and afore decision was warranted to prevent multiplicity of proceeding under Excise Act and Rules, in the interest of justice.

9. In the light of the above, impugned notice bearing DB No. 101 dated 26.06.2024 issued by the 4th respondent arising out of Case No. 46 of 2024-25 stands set aside. C.W.J.C. No. 13474 of 2024 is allowed.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

mcverma/-

AFR/NAFR	AFR
CAV DATE	30.09.2024
Uploading Date	04.10.2024
Transmission Date	04.10.2024

