

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17161 of 2024

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Santosh Kumar Mukhiya, son of Sita Ram Mukhiya @ Garai Mukhiya
resident of village- Mao Behat, P.S. - Manigachi, District- Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar through Commissioner, Excise Bihar Patna.
2. District Magistrate, District - Darbhanga.
3. Sub-Divisional Officer, Benipur, District Darbhanga.
4. Circle Officer, Manigachi, District Darbhanga.
5. Senior Deputy Collector, District - Darbhanga.
6. The Superintendent of Excise, Darbhanga.
7. The S.H.O. Manigachi, Police Station, District- Darbhanga.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Md. Shahnawaz Ali
For the Respondent/s	:	Mr. Government Advocate 13

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
And
HONOURABLE MR. JUSTICE S. B. PD. SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE S. B. PD. SINGH)

Date : 22-11-2024

In the instant petition, the petitioner has prayed

for the following reliefs(s):-

*“That this application is directed to set
aside the order vide memo no-85 dated
02.09.2024 passed in excise appeal case no-
63/2024 passed by commissioner Excise Bihar
Patna whereby and where under it is directed
that the order passed by the court of sub-
divisional officer Benipur dated 19.07.2022 is
set aside and to set aside the order to deposit
Rs 1 Lakh as minimum punishment for release*

of the house in confiscation (Excise) case no- 35/2020 as per rule 12(Kha) of Bihar Prohibition and Excise Rule 2021 and further be pleased to set aside the order dated 19.07.2022 passed in confiscation (Excise) case no- 35/2020 by the respondent no-3 in connection with State Vs Santosh Kumar Mukhiya and to release the house of the petitioner which has been sealed in connection with Manigachi P.S. Case No. 41 of 2018 under Bihar Prohibition and Excise Act 2016.”

2. Briefly stated, the facts of the case is that on 01.03.2018 at 10:30 P.M, the Officer-in-charge, Manigachi Police Station got secret information at the time of patrolling that one Santosh Kumar Mukhiya (petitioner) was engaged in the business of sale and purchase of liquor. After getting such information, on 02.03.2018 at 2:00 A.M, the informant, in the night raided the house of the petitioner. On seeing the police, one man started fleeing from the house who was caught. The apprehended accused disclosed his name as Santosh Kumar Mukhiya, the petitioner. On search, 3 bottles of

illicit Indian made foreign liquor each of 180 ml were recovered from a Bora (*jute packet*). On the basis of the aforesaid facts, Manigachi P.S. Case No. 41 of 2018 dated 02.03.2018 was instituted under Section 30(a) of the Bihar Prohibition & Excise Act, 2016.

3. It is submitted by learned counsel for the petitioner that father of the petitioner is the owner of the house and he has not concern with the alleged recovery of illicit liquor. The recovery was made from the roof-top which is an open space, hence, it might be a possibility that some neighbour, with an intention of settle his dispute with the family of petitioner, has thrown the said liquor on the roof-top and thereafter informed the police. There is recovery of only a meager quantity 540 ml of illicit liquor. Moreover, as per F.I.R, the illicit Indian made foreign liquor was recovered from Plot No. 5824(new) whereas the house of the petitioner is situated in Plot No. 5854 which creates doubt about the authenticity of the present case. The petitioner is a poor person and living in

a small house with his family in a miserable condition. It is also submitted that now vide Excise(Appeal) No. 63 of 2024, the petitioner has been imposed a penalty of Rs. 1 lakh for release of the house.

4. Learned counsel for the respondents submits that recovery of illicit liquor was made from the house of the petitioner. The petitioner was properly noticed in Confiscation (Excise) Case no. 35 of 2020 and the respondent authority was justified in taking action under the provisions of the Excise Act. The petitioner has alternative remedy to get the house unsealed after making payment of penalty in terms of Rule 12(B) of the Bihar Prohibition & Excise Rules, 2021.

5. From perusal of the record, it has transpired that alleged recovery of 540 ml of illicit Indian made Foreign liquor has been made from the roof-top of the house of the petitioner. The alleged recovery has not been made from the conscious possession of any family members of the petitioner. The illicit liquor was seized

from the roof-top which is an open space. The alleged house is not owned by the petitioner, rather it is owned by his father as per para 4 of the petition.

6. In that view of the matter, this Court finds that a penalty of Rs. 10,000/-(Ten Thousands) is appropriate in light of the facts and circumstances of the case.

7. Accordingly, the order dated 19.07.2022 passed by learned Sub-Divisional Officer, Benipur, Darbhanga in Confiscation (Excise) Case No. 35 of 2020 as well as the order dated 02.09.2024 passed by learned Commissioner, Excise, Bihar, Patna in Excise(Appeal) No. 63 of 2024 are set aside.

8. We are conscious of the fact that alleged recovery is of meager quantity and the aforesaid order has been 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 Sections 58, 92 and 93 of the Bihar Prohibition and Excise Act, 2016, for a trivial issue relating to seizure of 540 ml of illicit Indian made Foreign liquor and the aforesaid decision is warranted to prevent multiplicity of proceeding under Excise Act and Rules, in the interest of justice.

9. Considering recovery of small quantity of liquor, the petitioner is directed to deposit a penalty of Rs. 10,000/-(Ten Thousands) and the concerned authority is hereby directed to collect fine of Rs. 10,000/-(Ten Thousands) and unseal the house within a period of one week from the date of receipt of this order.

10. Accordingly, the writ petition stands disposed of.

(P. B. Bajanthri, J)

(S. B. Pd. Singh, J)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	28/11/2024
Transmission Date	N/A