IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.640 of 2017

Arising Out of PS. Case No.- Year-1111 Thana- District-

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Amar Kumar son of Sri Sunil Kumar Singh resident of village - Balahi, P.S. - Warisnagar, District – Samastipur. ... ... Petitioner/s

Versus

1. The State Of Bihar Through Its Chief Secretary, Old Secretariat, Patna and Ors
2. The Principal Secretary, Home Police Department, Government of Bihar, Old Secretariat, Patna.
3. The Director General of Police cum Inspector General of Police, Government of Bihar, Old Secretaria
4. The District Magistrate, Samastipur.
5. The Sales Tax Commissioner, Central Investigation Bureau, Bihar.
6. Deputy Sale Tax Commissioner, Samastipur.
7. The Deputy Sale Tax Commissioner, Investigation Bureau, Darbhanga.
8. The Deputy Sale Tax Commissioner, Begusarai.
9. The Officer In-Charge, Warisnagar, Samastipur.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Vinay Ranjan, Advocate

For the Respondent/s : Mr. Ajit Kumar, GA 9

Mr. Nalin Vilochan Tiwary, AC to GA 9

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CORAM: HONOURABLE MR. JUSTICE SOURENDRA PANDEY

CAV JUDGMENT

Date : 22-08-2025

Heard learned counsel for the petitioner and the learned counsel for the State.

2. This writ application was filed for issuance of a direction to the respondent authorities to release the seized food

products of the petitioner firm which was seized on 10.02.2017, stating it to be not only illegal but also without jurisdiction and further to allow compensation for the loss which has incurred to the petitioner due to their callous and arbitrary action and may further for issuance of direction for initiation of disciplinary action against the erring authorities and further for issuance of any other appropriate writ or writs, order or direction to which the petitioner may be found legally entitled to.

3. During pendency of this application an I.A. No. 2448 of 2017, was filed on behalf of the petitioner seeking amendment in the prayer portion of the writ application to the following extent:-

(1) To quash the FIR of Waris Nagar P.S. Case No. Case 175 of 2017 registered Since under Section 35(e) of the Bihar Prohibition and Excise Act, 2016.

(2) Further prayer is to implead the Excise Superintendent and Sub-Inspector, Excise, Samastipur as respondent no. 10 and 11.

(3) To release the seized vehicle.

4. By order dated 29.11.2017 the Court had allowed the prayer for amendment as the respondents had no objection on the aforesaid prayer and had directed the petitioner to produce

the purchase receipt of the vehicle as well as the owner book as the vehicle was not yet registered with the concerned District Transport Office.

5. From the records, this Court finds that on 05.01.2018 the Court had directed for provisional release of the vehicle in question subject to the petitioners producing the purchase receipt of the vehicle and owner book of the vehicle before the learned Special Judge, Samastipur where the case was pending and the matter was directed to be listed along with Cr. W.J.C. No. 1405/2017 and 2396 of 2017.

6. Learned counsel for the petitioner submits that the petitioner's firm is an authorized distributor for sale of food products and other products, being appointed as distributor by M/s Siddhi Enterprises, which is the Bihar Marketer of Non Alcoholic Beverage Soft Drinks Marketer of 10.000, King Farmer, Thousand Volt, Kalalon Golden 5.00.000, King Farmer, 1.00.000 brand and all type of (WFM Food Products) of the said Manufacturing Company.

7. Learned counsel further submits that from perusal of the documents as regards grant of valid license as granted by Ministry of Food Processing Industries, Govt. of India, the certificate of registration of Trade Mark, License as issued under

FSS Act, 2006 it would be clear that the Manufacturing company producing such products is licensed after approval of the Govt., and further perusal of letter no. 2348 dated 06.09.2016 would show that the seized food product is a non-alcoholic product. Learned counsel has submitted stated that the said Manufacturing Company appointed M/s Siddhi Enterprises, as its Bihar Marketer which is also issued valid License under FSS Act, 2006 by Govt. of Bihar as would be apparent from the license as issued by the designated officer, Patna Division on 02.02.2017. Learned counsel has next submitted that the said Siddhi Enterprises appointed the petitioner's firm i.e. M/s Amar Kumar for Distributorship for sale of the products of the Manufacturing Company as would be evident from the letter of authorization for Distributorship. It has been submitted that M/s Siddhi Enterprises is the Bihar Marketer of the food products, which is apparent from letter of appointment by the Manufacturing Company issued in its favor, dated 18.12.2016. The petitioner's firm under legal authorization has been conducting business since 2016 abiding by all the requirement under law, but in absence of the petitioner that is the proprietor, the respondent sale Tax Authorities without Jurisdiction seized 57 cartons of WFM super strong non-alcoholic beverage. Learned counsel has submitted that at this juncture it is relevant to state that the Govt. of Bihar vide letter no. 385 dated 09.02.2016, as issued under the signature of the Commissioner of Excise had directed all the sub-ordinate authorities that sample of food products may be sent for chemical examination after keeping two sample but, in the instant case it is apparent that before getting the sample examined, the seizure was made, thus being in violation of the directives of the Government. Learned counsel has thus submitted that the action of the respondent sale tax authorities is arbitrary which is apparent from the fact that it further informed the Excise authority about the seized items in the local police station. In order to save their skin they wrote a letter to the Excise Superintendent to get the food products examined as is apparent from perusal of Memo no. 76 dated 14.12.2017.

8. Learned counsel has further submitted that vide letter no.186 the report, after examination of the seized food products was sent back to the Sale Tax Authorities whereby it was confirmed that it had ethyl alcohol content 0.3%. From perusal of Annexure -8 series it is apparent that Department of Excise did not contemplate any coercive action because the product did not had an alcoholic content. However, Sale Tax

Authority were desirous of hefty illegal gratification and for such reason, despite such report submitted after chemical examination did not release the food products, so seized.

9. It has been submitted by the learned counsel for the petitioner that the above contention about the arbitrary action is further supported from the fact that vide letter no. 181 dated 28.02.2017 the sales tax authority, in order to harass the petitioner, issued letter to the Excise Superintendent that on such a report any proceeding can be drawn, whereas from the fact stated above it is apparent that without jurisdiction they have already proceeded to seize the food products. It has been submitted that petty firm like petitioner have to undergo huge harassment. It further apparent from the fact that the Excise Superintendent advised that sample of seized product may be sent to the Bureau of Indian Standard (B.I.S) to verify whether it is permissible for sale or not. Learned counsel has further submitted that in spite of Excise Department not recommending any proceeding, the Deputy Commissioner Sale Tax, Samastipur Division acted arbitrarily and again issued a letter which, on reading, would show that he presumed that the seized food product appears like beer and his presumption can be gathered from perusal of memo No. 792 dated 24.03.2017 (Annexure-11

series). Learned counsel has further submitted that the arbitrary action of the respondent authorities can be apparent from the fact that the Test Report as issued after demand by the Food Safety Administration by its Memo no. 7 dated 28.03.2017 (Annexure-12 series) from Mitra S.K. private limited shows that upon analysis the content of alcohol was below detection limit but opined to be not branded. It has been submitted that perusal of the seizure report would show that the Seizure was not made on the finding of not branding and neither it was made on any finding of alcoholic content but, was arbitrarily seized. Learned counsel has submitted that under pressure of loss of huge amount of Money and despite every effort to get the perishable food items released, the authority did not release the said food items, thus he had no option but to file a complaint case before the Court of the learned Chief Judicial Magistrate, Samastipur, raising his grievances, apprising all the above facts but could not avail any speedy remedy.

10. Learned counsel has further submitted that even the appointed Bihar Marketer, M/s Siddhi Enterprises has raised the grievance of the petitioner before the Commissioner of Excise as would be apparent from letter dated 18.01.2017 and 18.02.2017, but no heed has been extended and thus, it goes to show that the

authorities were acting in an arbitrary manner and therefore, the petitioner was compelled to move before this Hon'ble Court.

11. It has lastly been submitted that from the facts, as above it is apparent that petitioner is being harassed due to callous and arbitrary action of the authorities.

12. A counter affidavit has been filed on behalf of the Respondent No. 4 and also a separate counter affidavit and supplementary counter affidavits have been filed on behalf of respondent No. 5 to 8. In the counter affidavit filed on behalf of respondent No. 4 it has been stated that on 10.02.2017 a team of the Officers of the Commercial Taxes Department for the purpose of inspection went at the business premises of the petitioner situated at village Ballahi, Varisnagar, but the shop premises of the petitioner was found closed. Thereafter, the Inspecting team went at the residence of the petitioner situated at the said village where a pick up van having no registration number loaded with WFM-10000 Super strong, non-alcoholic drink (as per wrapper of the bottle) was spotted. The owner or driver of the vehicle was not present there. One Sri Sanjeev Naipuri was found present there who claimed to be owner of the goods. The inspecting team requested him to co-operate in the inspection of the goods. Since no legal/valid documents for the

transportation of the goods were produced by any one at the time of inspection, the inspecting team in presence of the aforesaid Sanjeev Naipuri and two independent witnesses and local Police seized the goods loaded on the vehicle under section 61(2) read with section 56(4)(a) of the Bihar Value Added Tax Act, 2005. The seized goods- WFM-10000 Super strong bottles were almost similar to liquor/beer bottles at first glance. A seizure list (Annexure-5 to the writ petition) was accordingly prepared by the inspecting team and a copy of the same was handed over to the aforesaid Sanjeev Naipuri. It has further been stated that in view of the Prohibition policy of the state, the Commercial Taxes Department sent a letter to the Superintendent of Excise, Samastipur to ascertain the alcoholic nature of the seized goods. The Superintendent of Excise, Samastipur vide his letter no. 698 dated 18.07.2017 requested the Commercial Tax Department to send the relevant documents of the case for taking necessary action by the Excise Department. The chemist reports were received through his letter nos. 997 dated 14.02.2017, 1034 dated 16.02.2017 and 1035 dated 16.02.2017. The samples on chemical analysis by the excise chemist, Bihar, Patna have been found positive in ethyl alcohol content though of varying percentage in between 0.3%

to 0.5%. In compliance of the order of the Excise Commissioner contained in letter no. 385 dated 09.02.2017, the Excise superintendent, Samastipur submitted a report to the Secretary to the excise Commissioner.

13. It has been stated that it has been well established that the sample of product liquid drink which was being marketed in sealed bottles by the petitioner in the district of Samastipur on chemical examination have been found positive in alcohol content. As per the prevalent prohibition policy, the State have zero tolerance regarding beverages containing alcohol. It is submitted that section 2(3) of the Bihar prohibition and Excise Act, 2016 defines "Alcohol" as follows:-

> *"Alcoholic means a solution or mixture containing Alcohol and being of any strength and purity".*

14. That it is submitted that the word used in section 2(3) of the Bihar Prohibition and excise act, 2016 "BEING OF ANY STRENGTH" is of much significance. From the reports of the Excise Chemist it is crystal clear that the sample collected from various places on chemical analysis have been found to contain alcohol though of varying percentage.

15. In the supplementary counter affidavit filed on behalf of the respondent nos. 5 and 8, apart from the statements made in the counter affidavit filed on behalf of the respondent No. 4, it has been stated that the Hon’ble Apex Court in SLP (Crl.) 600 of 2018 (State of Bihar and Ors vs. M/S Smart India Marketing Proprietorship and Anr) has *vide* order dated 08.11.2019 permitted the State of Bihar to initiate action against wrongdoers if they are found manufacturing energy drinks having alcoholic contents.

16. The learned G.P-9 has further stated that the petitioner has been willfully avoiding the lawful authority of assessing officer by abstaining himself from penalty proceeding initiated under section 61(3) read with section 56(4)(b) of VAT Act taking benefits of this Criminal Writ. Hence, in place of deciding the case ex-parte it was considered proper to keep the disposal of penalty proceeding in abeyance till the disposal of case relating to Waris Nagar P.S. Case No. 175/2017, by the concerned criminal court. Further it has been stated that the petitioner for his Singh Traders, under the provisions of VAT Act is having liability to pay tax (VAT) with effect from 15.12.2016 but he did not pay any tax nor filed any return under VAT Act. Unlawful transportation of goods are sufficient evidence to

establish that the petitioner is a habitual evader of commercial taxes which is an offence under clause-(b) of sub-section (2) of section 81 of the VAT Act and is punishable by a Competent Court of Criminal Jurisdiction. It has also been stated that the petitioner is not having only criminal liability but also civil liability of tax and penalty. Petitioner has willfully suppressed his civil liability of tax and penalty of the seized goods.

17. It has further been submitted that the Pick-up van of the petitioner has already been released on account of order of the learned court below without furnishing security required under clause-(c) of sub-section (4) of section 56 of VAT Act by suppressing material facts regarding his civil liabilities of tax and penalty. Penalty proceeding initiated under section 61(3) read with section 56(4)(b) of the VAT Act is still pending due to pendency of criminal proceeding initiated by the Department of Excise and Prohibition under the provisions of 2016 Act. pending before the court of competent jurisdiction.

18. It has lastly been stated that even if the seized goods is a soft drink other than wine the possessor thereof is liable to pay beside tax @ 15% as penalty and @ 45% of the value added goods and in view of the aforesaid the petitioner is not entitled to any relief.

19. On careful consideration of the arguments forwarded by the respective parties, it is clear that there is no quarrel with regard to the factual aspect of the consignment of the petitioner being seized on the ground that it contained alcoholic materials and only after a chemical examination report, the same was found that it contained alcohol, which was within the BIS standard as defined under Sections 2(4) and 2(6) of the Bihar Prohibition and Excise Act, 2016.

> *"2(4) alcoholic beverage or portable liquor" means any beverage containing alcohol in conformity with the BIS standards which may be intoxicating and is fit for human consumption;*
>
> *2(6) BIS standards" means standard prescribed by Bureau of Indian Standards or the standards prescribed by any other Central Government authority, constituted under the relevant Act;"*

20. From the submissions made by the respective parties, this court also finds that the only question which now remains to be decided in the present writ application is whether the petitioner is entitled for any compensation on account of the loss which has incurred due to the callous and arbitrary action as alleged and also whether disciplinary action against the erring authorities should be initiated.

21. This court has gone into the pleadings of the respective parties and it has been found that the authorities had waited initially for the samples collected and sent to the excise chemist, Bihar, Patna for chemical examination and its report and subsequent to the chemical analysis, it was found that ethyl alcohol content, though of varied percentage in between 0.3% to 0.5% was there in the samples and hence the State taking the protection as enshrined under Section 2(3) of the Bihar Prohibition and Excise Act wherein alcohol has been defined as follows.

> *"2(3) alcoholic" means a solution or mixture containing alcohol and being of any strength and purity."*

22. From the aforesaid submissions of the State, it could be understood that the State was well within its right to seize the materials and as from the chemical analysis report, alcohol was found, however, it might be within the BIS standards.

23. So the question of whether there was a delay on account of the State authorities in release of the consignment or the vehicle seized, it has been found that initially, the Department inter-se had been communicating with regard to their competence to verify the contents and for the chemical

analysis. However, when the excise department had stated that the sales tax department was competent enough to get the verification done as per the samples collected, the same was ultimately done.

24. This Court has seen that the goods were released earlier to the petitioner by the directions of this Hon'ble Court and from the contents, it would also be found that the materials were sent for chemical analysis as the State of Bihar was under a complete ban against alcohol and therefore an analysis was also to be done and hence there was no mischief, as far as non-release of the goods earlier, at the hands of the state officials and such action by the State goes on to show that the petitioner has not been able to establish the malafide action by the respondents causing the delay. I find that it was on account of the bona fide suspicion with regard to the materials kept with the petitioner and which was admittedly recovered from the house of the petitioner from a pickup van which did not have a registration number the respondent acted in the manner they did. It is further found that the goods of the petitioner would perish only because there was nothing on record to substantiate the claim of the petitioner, that it was a good consignment which did not contain alcohol, and as such, it was on account of the procedural

formalities the delay had occurred, and as such, the petitioner could not be legally entitled to any compensation nor any disciplinary action is necessary against any official.

25. In view of the aforesaid, as the seized food products of the petitioner firm has already been released, there is no further directions required to be passed in the present case with regard to the same.

26. The subsequent prayer made by the petitioner with regard to quashing of the F.I.R of Waris Nagar P.S. Case No. 175 of 2017 is the next issue to be decided.

27. The learned counsel for the petitioner has relied upon the judgment passed in a case of **M/s Smart India Marketing Proprietorship& Anr. vs. The State of Bihar and Ors**. in **Cr. W.J.C. No. 627 of 2017** wherein this Hon'ble Court in similar circumstance has quashed the FIR holding that the allegation doesn't constitute any offence. It would be apposite to refer to Paragraph nos. 26, 27 and 28 of the said judgment which observes as under

> *26.It is well settled that the statutory provisions cannot be read in isolation to gather the aim and object of the Legislature in bringing the Law in force. If the Legislature would have intended to put complete prohibition even on non-alcoholic beverage as per the standard of BIS,*

there was no need to incorporate clarification in the form of definition of the word "alcoholic beverage or portable liquor" under Section 2(4) of the Act. Only definition under Section 2(3) of the Act was enough to fulfill the aforesaid desire.

On a careful consideration of the aforesaid statutory provision, it is evident that what the Act prohibits is the intoxicant or liquor containing alcohol of any strength and purity, as per the definition of "alcoholic" under Section 2(3) of the Act. Simultaneously, it does not prohibit sale etc. of the non-alcoholic substances in conformity with the standard set by the BIS in view of the definition and clarification contained under Section 2(4)(6) of the Act.

27.In the present case, only ethyl alcohol of 0.5 and less per cent has been found by the expert as per Annexure-4. Hence, this Court is concerned only with alcoholic substance out of the different intoxicants. Moreover, the Penal provision must be specific with all clarity. In the present case, the Act specifies that alcoholic beverage or portable liquors should confirm to the standard fixed by BIS. Thus, in my consideration, the petitioners were selling non-alcoholic substance, according to the BIS standard. Hence, it cannot be said that the petitioners have committed any offence under the Act or the FIR discloses any offence much less any cognizable offence said to be committed by the *petitioners.*

28.The Law is well settled that if the FIR does not disclose a cognizable offence, it would be fit to be quashed for the reason that its continuance would amount to an abuse of the process of the law and would occasion failure of justice.

28. Thus, in view of the aforesaid observations and comparing it with the facts of the present case as detailed herein above, the present case is exactly similar to the aforesaid case and thus in view of the above, the FIR of Waris Nagar P.S. Case 175 of 2017 is fit to be quashed.

29. This application stands allowed and the FIR of Waris Nagar P.S. Case 175 of 2017 is hereby quashed and so is the entire proceedings initiated on the basis of the same. However, no order as to cost.

(Sourendra Pandey, J)

Prakash/-

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Transmission Date	