

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15357 of 2024

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1. Lal Jhari Devi @ Laljhari Devi @ Lalghari Devi, wife of Late Bunni Pasi @ Buni Pasi @ Bunni Choudhary @ Late Buchi Pasi, Resident of Khajuriya, Ward No. 25, P.S. Gopalganj Town, District- Gopalganj.
 2. Kanhaiya Pasi, Son of Late Buni Pasi @ Bunni Pasi @ Bunni Choudhary @ Late Buchi Pasi, Resident of Khajuriya, Ward No. 25, P.S. Gopalganj Town, District- Gopalganj.

... .. Petitioners.

Versus

1. The State of Bihar.
2. The District Magistrate-cum-Collector, Gopalganj.
3. The Excise Superintendent of Police, Gopalganj.
4. The Excise Commissioner, Govt. of Bihar, Patna.
5. The Superintendent of Police, Gopalganj.
6. The Station House Officer, Gopalganj Town Police Station, Gopalganj.

... .. Respondents.

Appearance :

For the Petitioners	:	Mr. Rajesh Ranjan, Advocate.
For the State	:	Mr. Mithilesh Kumar Upadhyay, AC to GP-3.

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 24-02-2025

In the instant writ petition, the petitioners have prayed
for the following relief(s):

“For issuance of an appropriate writ/writs,
order/orders, direction/directions for
quashing the order dated 02.02.2021
passed in Excise Appeal Case
No.41/2018 by Excise Commissioner
whereby and whereunder confiscation



order dated 18.10.2016/15.11.2016 passed by District Magistrate, Gopalganj in Confiscation case no.47/2017 arising out of Gopalganj P.S. Case No.347/2016 has been affirmed.”

2. On 10.02.2025, we had passed the following orders:

“Prima facie, petitioners are fence sitters insofar the relief(s) sought in the present lis for the reasons that identical matter was subjudiced before this Court in **C.W.J.C. No.16279 of 2022 (Sanjay Kumar @ Sanjay Pasi @ Sanjay Choudhary Versus The State of Bihar and others)** and it was decided on **26.04.2023** in favour of Sanjay Kumar @ Sanjay Pasi @ Sanjay Choudhary. The petitioners had a cause of action in the year 2021, the date on which Appellate Authority decided Excise Appeal Case No.41 of 2018 on 02.02.2021.

2. Be that as it may, learned counsel for the petitioners submitted that both the petitioners were involved in a criminal case and they were in custody, resultantly, they could not approach this Court timely. In this regard, no material has been placed on record. Further,



subject land is stated to be a joint family property. According to the revenue records, who is the owner of the property is not forthcoming. All these details must be furnished so as to examine whether the delay and laches could be hurdle for the petitioners or not?

3. Re-list this matter on 24.02.2025.”

3. Today, learned counsel for the petitioners on instructions submitted that both the petitioners were involved in criminal case and they were convicted and they were under custody during the period from 26.02.2021 till 13.07.2022 and subsequently acquitted in Appeal.

4. Be that as it may, on 26.04.2023, the date on which case of Sanjay Kumar @ Sanjay Pasi @ Sanjay Choudhary in C.W.J.C. No.16279 of 2022 was decided. Thereafter, the present writ petition has been filed belatedly in the year 2024.

5. Having regard to the fact that alleged offence is relating to possession of 60 liters of illicit liquor (country made Chulai liquor) and various articles for preparation of illicit liquor and the officials seized those material and the offence was committed on 18.08.2016. Further the aforementioned offences were noticed by officials on the version of one person disclosed consuming spurious liquor and thereafter there were 19 persons



died on account of consumption of spurious liquor sold by petitioners and others. Consequently, confiscation proceeding has been undertaken while confiscating the subject matter of premises on 18.10.2016/15.11.2016.

6. Feeling aggrieved by the confiscation of the subject matter of premises, petitioners have preferred appeal before the Appellate Authority and suffered an order on 02.02.2021. Therefore, the cause of action was accrued to the petitioners in the month of May, 2021, if reasonable period of time is taken into consideration. Petition should have been filed after releasing from judicial custody within a period of three months. However, for the purpose of filing writ petition, there is no time limit. Be that as it may, the Hon'ble Supreme Court in the case of **State of Jammu and Kashmir Versus R.K. Zalpuri**, reported in **AIR 2016 Supreme Court 3006**, in paragraph-20, has held as under:

“20.Having stated thus, it is useful to refer to a passage from City and Industrial Development Corporation v. Dosu Aardeshir Bhiwandiwalla and Others, wherein this Court while dwelling upon jurisdiction under Article 226 of the Constitution, has expressed thus:-

“The Court while exercising its jurisdiction



under Article 226 is duty-bound to consider whether:

- (a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;
- (b) the petition reveals all material facts;
- (c) the petitioner has any alternative or effective remedy for the resolution of the dispute;
- (d) person invoking the jurisdiction is guilty of unexplained delay and laches;
- (e) ex facie barred by any laws of limitation;
- (f) grant of relief is against public policy or barred by any valid law; and host of other factors.”

7. Learned counsel for the petitioners submitted that in the criminal proceedings, petitioners have been acquitted. Therefore, action of the respondents insofar as confiscation and its affirmation by the Appellate Authority are liable to be set aside.

8. Offences committed under Section 47(A) and 57 of the Bihar Prohibition and Excise (Amendment) Act, 2016 read with offences under Section 272 and 273 of IPC, the State is



empowered to initiate parallel proceedings like confiscation proceedings and criminal proceedings for the offences under the Bihar Prohibition and Excise (Amendment) Act, 2016 read with the then Indian Penal Code. Therefore, if the petitioners are acquitted in the criminal case, it has no bearing insofar as confiscation proceedings are concerned since parallel proceedings are provided under the aforementioned Act and Rules. At this stage it is relevant to extract para-8 of the counter affidavit and it reads as under:

“8. That averment made in para 5 of the writ petition, it is submitted that on the basis of written report of SHO cum-Police Inspector, Gopalganj Town P.S. namely V.P. Alok Gopalganj Ps Case NO-347/2016 dated 18.08.2016 u/s-272, 273 of IPC and 47(a) and 57 of the Bihar Excise (Amendment) Act, 2016 was registered. The informant of the case has alleged inter-alia in his written report that some persons were admitted in Sadar Hospital Gopalganj shown the sign of consumption of spurious liquor and one of them namely Bandhu Pasi stated that he had consumed liquor, purchased from accused persons of the case. On the basis of that information, the police party rushed into Village-Khajurbani and conducted the raid and recovered the country made chulai liquor from the house of the petitioner and other accused persons and accordingly FIR was lodged. It is



requisite to mention here that there was total 19 persons were died due to consumption of such spurious liquor for which Gopalganj PS Case n-348/2016 was registered under section 328, 304 & 120B/34 of IPC and section 50(a) (b) (c) of Same Act, 2016.”

Reading of the factual aspects of the matter it is serious offence committed by petitioners. No doubt, petitioners were acquitted in criminal case. However, confiscation proceedings is independent to that of criminal proceedings. It is necessary to point out that standard of proof required in the two proceedings like criminal and civil are entirely different, however, it is well settled that in a given case both the proceedings can proceed simultaneously. If one proceeding is binding on another proceeding, in that event there is no point in providing twin proceedings in the Statute. The Hon’ble Supreme Court time and again held that parallel proceedings are permissible like in disciplinary and criminal proceeding in the service matters.

9. No doubt, confiscation of subject matter is of premises/land would be too harsh for the reasons that petitioners’ livelihood is involved and it violates Article 21 of the Constitution, therefore, we proceed to invoke extraordinary jurisdiction under Article 226 of the Constitution and modify



the confiscation order and Appellate Authority's order to the following effect:

“Reading of the Bihar Prohibition and Excise Act, 2016 read with the Bihar Prohibition and Excise Rules, 2021, there is a provision for imposition of penalty from Rs.1,00,000/- to Rs.5,00,000/-(Rupees One Lac to Rupees Five Lacs). Having regard to the seizure of 60 liters of illicit liquor along with the articles for the purpose of manufacturing illicit liquor and 19 persons have died on consumption of illicit liquor, we propose to impose the penalty of Rs.2,50,000/-(Rupees Two Lacs and Fifty Thousand). The same shall be remitted in the concerned Treasury or before the concerned authority within a period of eight weeks from today. If such penalty amount is deposited before the concerned authority, the concerned authority or respondent is requested to release the subject matter of premises in favour of the petitioners.”

10. The above exercise has been undertaken by us only to avoid multiple litigation to the extent that setting aside the orders of Confiscation and Appellate Authority and remanding the matter to the confiscating authority to modify the penalty of confiscation of premises to that of imposition of penalty in



terms of money, as provided under the Bihar Prohibition and Excise Act, 2016 read with the Bihar Prohibition and Excise Rules, 2021.

11. Instant writ petition is allowed in part.

(P. B. Bajanthri, J)

(Sunil Dutta Mishra, J)

P.S./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.03.2025.
Transmission Date	NA

