

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.2478 of 2024

Arising Out of PS. Case No.-356 Year-2024 Thana- DIGHWARA District- Saran

Shiv Mahto @ Shivji Mahto S/o- Late Jai Mahto Resident of village-
Hemantpur Dighwara Police Station- Dighawara District- Saran

... .. Petitioner/s

Versus

1. The State of Bihar through Director General of Police Bihar
2. The Secretary, Department of Excise, Govt. of Bihar, Patna Bihar
3. The Superintendent of Police, Saran at Chapra Bihar
4. The Officer incharge of Dighwara Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Mili Kumari
For the Respondent/s : Mr.G.P.17

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

4 21-04-2025 Heard learned counsel for the petitioner and learned
counsel appearing on behalf of the State.

2. This writ application has been filed for directing the
respondent authorities to un-lock/un-seal the house of the
petitioner situated at village-Hematpur Dighwara within
Dighwara Police Station appertaining to Khata no. 40, Khesara
No. 159 measuring an area of 11 dhoors which was sealed by
Dighwara Police 14.10.2024.

3. The facts in brief is given hereinbelow:-

(i) On 29.09.2024, the Dighwara Police was on round
duty and during patrolling duty when the police reached near the
house of one Deepak Kumar at about 20.10 Hours, the police



noticed that one man closed the door seeing the police.

(ii) The police asked to open the door but after hearing the police, one man and one woman were saying not to open the door. The informant further says that the Mahal Chowkidar identified these people as Deepak Kumar and Champa Devi who are son and wife of the petitioner.

(iii) The Informant further says that he got opened the door by using force and he found country made liquor inside the house which was recovered in presence of two police personnel and a case under section-30(a) of Bihar Prohibition and Excise Act was instituted being Dighwara P.S. case no. 336/2024.

4. Learned counsel for the petitioner submits that from bare perusal of the First Information Report, it is apparent that the police acted on a information that country made liquor was being sold by Deepak and his mother and the police recovered in presence of two members of the police team although there were so many persons available in the vicinity.

5. It is further submitted on behalf of the petitioner that at the relevant date and time, the petitioner was out of his village for his treatment. The petitioner suffered Paralysis attack and his wife and his son were with him as attendant and there was nobody in the house and his enemy in collusion with the local



police got this case instituted.

6. It is further submitted that the petitioner had serious land dispute with respect of the house of the petitioner with his Pattidars who forcibly entered into one Khaparpouse house adjacent to the house where the petitioner was/is living. The petitioner filed Eviction suit no. 8/2010 which was decreed in favour of the petitioner and the persons claiming as tenant were evicted by the Judgement dated 21.09.2013 passed by 3rd Additional Munsif at Chapra.

7. Learned counsel submits that the persons who were evicted by order of competent civil court did not forget and reconcile and when the petitioner was out of his village with his wife and son got planted this case.

8. He further submits that when nobody was present in the house, the police got opened the house by breaking lock and a concocted case under Bihar Prohibition and Excise Act was filed and got the house sealed.

9. Learned counsel for the petitioner also submits that when the petitioner returned to his village house, he found the house sealed and from neighbours he learnt about the false case and high handedness of the police and the petitioner was compelled to spend night on Railway Station. The petitioner



visited the local police and police officer of the District and requested them to allow the petitioner to live in the house but no fruitful result came out.

10. Learned counsel appearing on behalf of the petitioner also submits that the petitioner filed an application in the office of the District Magistrate, Saran at Chapra on 21.10.2024 for redressal of his grievance. He said that he was out from the house for treatment and when he returned found his house locked due to which the petitioner along with his family members were compelled to spend restless night hither and thither and because of irregular life routine, the petitioner disease is not curing.

11. Learned counsel for the petitioner lastly submits that the petitioner gave an application to D.C.L.R. Sonapur on 29.10.2024 and again another application to the District Magistrate, Saran, Chapra on 14.11.2024 but all went in vain.

12. The State has filed its counter affidavit.

13. From the counter affidavit, it appears that because of the recovery of the liquor from the house, the entire house has been sealed after nineteen days. No confiscation proceeding has been initiated against the petitioner with regard to the house. From the F.I.R., it appears that neither the petitioner nor his



family members were present in the house.

14. This Court in the case of ***Ram Babu Prasad Vs. The State of Bihar*** reported in **2023 (3) BLJ 686** has held as follows:

"7. On consideration of the rival submissions, this Court would find that as on the date of alleged recovery of illicit liquor from the petitioner's premises, that is, 17.03.2022, Section 62 of the Act, that is, prior to amendment by Bihar Act 03 of 2022 on 01.04.2022, was applicable, which reads as follows.

"62. Premises liable to be sealed- If it comes to the notice of any excise officer or any police officer, not below the rank of a Sub Inspector, that any liquor or intoxicant has been found at a particular premises or a particular premises or a part thereof is or has been used for committing any offence under this Act, he may immediately (emphasis ours) seal the premises and send a report to the Collector for the confiscation of the same.

Provided that if the said premises are temporary structures which cannot be effectively sealed, then the excise officer or the police officer, with the order of the Collector, may demolish such temporary structures."

8. Section 62 clearly provides the discretion to the excise officer or any police officer, not below the rank of Sub Inspector, to "immediately" seal the premises from where any liquor or intoxicant is found or which has been used for committing any offence under the Act.

9. The prescription "immediately" in Section 62 of the Act; or within 24 hours in the 2022 Rules is with a purpose. The recovery of illicit liquor from any premises as per Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as 'Act') makes the premises liable for confiscation. Since such stringent consequences follow as a



result of alleged seizure of illicit liquor; to obviate any false implication based on extraneous considerations, the Act as well as the 2022 Rules prescribe for sealing of the premises within 24 hours. Otherwise, it would be open to any seizing authority under the Act to seal any premises arbitrarily and at his own sweet will and visit a person with the extreme consequence in a most casual and arbitrary manner, which cannot be countenanced.

10. The expression "immediately", thus by no stretch of imagination can be conceived to intend sealing of premises after 42 days. The admitted sealing of petitioner's premises, 42 days after the alleged seizure of intoxicant, therefore, is unsustainable and in contravention of the statutory provision contained in Section 62 of the Act, as it existed on the date of the alleged recovery of intoxicants from the petitioner's premises.

11. This Court would also consider the plea on behalf of the State authorities regarding Rule 12 coming into force with effect from 05.04.2022, that is, after alleged recovery of illicit liquor from the petitioner's shop. Rule 1(3) provides as follows:-

"(3) It shall extend to the whole of the State of Bihar and shall apply to all pending cases."

12. As on the date of coming into force of this 2022 Rules, the case in question in these proceedings, arising out of alleged seizure and lodging of FIR on 17.03.2022 was pending. As per Rule 1(3) of the 2022 Rules, the same became applicable to the proceedings arising out of Khaira (Nagra) PS case No. 111 of 2022 with effect from 05.04.2022. Thus the words "immediately", employed in the Act, received further clarity and definiteness with the Rules of 2022. As such the petitioner's premises have been sealed 22 days after coming into force of the 2022 Rules. The sealing of the premises is, therefore, not only contrary to the provisions contained in the Section 62 of Act, noted above;



but the same is also in contravention of Rule 12 of the 2022 Rules. The delay is contrary to the statutory provisions and the length of delay, noted above, is also shocking to the conscience of the Court. The same when juxtaposed to the severe consequence of seizure and confiscation, is required to be viewed seriously and cannot be dismissed as a minor procedural infirmity. The sealing is thus delayed and arbitrary. Another serious infirmity is that sealing is without any scientific report certifying the recovery of alleged 360 ML of liquid to be an intoxicant or liquor.”

15. In the present case, the recovery is of 38 litres of illicit liquor. The house was not sealed immediately. No reasons have been assigned disclosed by the State for sealing the house after 19 days i.e. too when no confiscation proceeding is initiated or pending in the matter in connection with the house.

16. In view of the above, this application is allowed.

17.The Respondents are directed to unseal the petitioner’s house upon production of a certified copy of this order.

(Sandeep Kumar, J)

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