(2024) 05 PAT CK 0019

Patna High Court

Case No: Civil Writ Jurisdiction Case No. 4501 Of 2024

Santosh Kumar @ Pau Yadav		APPELLANT
	Vs	
State Of Bihar		RESPONDENT

Date of Decision: May 17, 2024

Acts Referred:
Constitution of India, 1950 â€" Article 300A#Bihar Prohibition and Excise (Amended) Rules, 2022 â€" Rule 12B#Bihar Prohibition and Excise Rules, 2021 â€" Rule 12B#Bihar Prohibition and Excise Act, 2018 â€" Section 30(a)(c)(d), 32(3), 33, 36, 41(1), 44#Bihar Prohibition and Excise Act, 2016 â€" Section 57B

Citation: (2024) 05 PAT CK 0019

Hon'ble Judges: P. B. Bajanthri, J; Alok Kumar Pandey, J

Bench: Division Bench

Advocate: Kumar Pankaj, Anuj Kumar

Final Decision: Disposed Of

Judgement

1. In the instant petition, the petitioner has prayed for the following reliefs:-

(1) For issuance of a writ in the nature of certiorari or any other appropriate writ or order for quashing of order dated 28.11.2022 passed

by respondent no. 2 i.e. the Excise Commissioner, Bihar, Patna in Excise Appeal No. 509/2022 whereby the order dated 02.06.20222

passed by the respondent no. 3 i.e. the Additional Collector -Cum- Additional District Magistrate, Nalanda in Confiscation No. 564/2021

has been affirmed by which an application under Rule 12(B) of Bihar Prohibition and Excise (Amended) Rules, 2022 filed by the petitioner

to get his house and premises unsealed upon deposit of penalty/fine has been rejected by the respondent no.3 by maintaining his earlier

order dated 18.12.2021 intact without appreciating the facts and circumstances of the case.

(ii) For setting aside the order dated 02.06.20222 passed by the respondent no. 3 i.e. the Additional Collector-Cum- Additional District

Magistrate, Nalanda in Confiscation No. 564/2021 whereby an application under Rule 12(B) of Bihar Prohibition and Excise (Amended)

Rules, 2022 filed by the petitioner to get his house and premises unsealed upon deposit of penalty/fine has been rejected by the respondent

no. 3 maintaining his earlier order dated 18.12.2021 intact without appreciating the facts and circumstances of the case.

(iii) For issuance of an appropriate writ(s) / order(s)/ direction(s) in the nature of Mandamus Commanding and directing the respondents

concerned to forthwith unseal/release the aforesaid house and premises of the petitioner bearing Old Holding No. 40 situated in Ward No.

29, Mohalla Azizghat (Daayra), P.S. Bihar, District Biharsharif in favour of the petitioner which has been sealed in connection with Bihar

P.S. Case No. 667/2021 instituted for offences u/s 30(a)(c)(d) /32(3) /33/36/41(1)/ 44 of the Bihar Prohibition and Excise Act, 2018.

(iv) For a direction to the respondents concerned to pay appropriate compensation to the petitioner since the petitioner and his wife

had/have been unnecessarily dragged by the respondents in the aforesaid connected case i.e. Bihar P.S. Case No. 667/2021 on account of

false and fabricated allegations based upon which the house and premise of the petitioner has been confiscated and ultimately after a full-

fledged trial the petitioner and his wife have been acquitted from all the charges in the said case ie. Bihar P.S. Case No. 667/2021 (G.R.No.

5877/2021) by the Judgment dated 21.02.2023 passed by the Additional District and Session Judge-11 cum Special Judge (Excise),

Biharsharif, Nalanda by observing that the prosecution has completely failed to prove the allegations against Santosh Kumar @ Pau Yadav

(i.e. the writ petitioner) and Soni Devi (ie. wife of the writ petitioner) beyond all reasonable doubts.

(v) For a direction to the respondents concerned to pay appropriate/adequate compensation to the petitioner as the petitioner has been

deprived of his property arbitrarily by the respondents in complete violation of Article 300-A of the constitution of India and also for

tarnishing the image of the petitioner in the society and compelling him to suffer from mental agony, harassment and financial loss.

(vi) For a direction to the respondent concerned not to put the aforesaid house and premise of the petitioner on auction sale during the

pendency of this writ application.

(vii) For any other direction, which your Lordships may deem fit and proper in the facts and circumstances of the case.

2. Briefly stated facts of the case is that 160 litres of spirit and 13.125 litres of foreign liquor alongwith other preparatory materials used for

manufacturing liquor as well as other articles were recovered from the house of the petitioner. On the basis of alleged recovery, police instituted a

case bearing Bihar P.S. Case No. 667 of 2021 for the offences punishable under Sections 30(a)(c)(d), 32(3), 33, 36, 41(1), 44 of Bihar Prohibition and

Excise Act, 2018.

3. Learned counsel for the petitioner submitted that on account of recommendation of Superintendent of Police, Nalanda (respondent no. 4),

Confiscation Case No. 564 of 2021 was initiated and notice was issued to the petitioner. On receipt of notice, petitioner appeared through his counsel

and filed his show cause submitting that nothing was recovered from first and second floor of the house of the petitioner. It is also submitted that

ground floor as well as Karkat House situated at North-East side of the premise of the petitioner had been leased out to one Karu Choudhary but the

Respondent No. 3 (Additional Collector -cum-Additional District Magistrate, Nalanda) did not consider the show-cause of the petitioner and passed

the order dated 18.12.2021 in Confiscation Case No. 564 of 2021 by confiscating the entire three storey house of the petitioner as well as the land in

question under the premise of the petitioner and entire house of the petitioner was put on auction sale. He further submitted that petitioner preferred

one writ application bearing C.W.J.C. No. 1701 of 2022 praying for setting aside the aforesaid confiscation order and further to release/unseal the

house of the petitioner and the said writ petition was disposed of on 22.04.2022 with liberty to the petitioner either to avail the remedy of appeal before

the appellate authority or to get his/her house unsealed after making payment of penalty in terms of Rule 12B inserted by amending Bihar Prohibition

and Excise Rules, 2021. He further submitted that pursuant to the order passed in C.W.J.C. No. 1701 of 2022, the petitioner filed an application before

the Respondent No. 3 (Additional Collector -cum- Additional District Magistrate, Nalanda) on 17.05.2022 alongwith duly filled prescribed Form V

under Rule 12B of Bihar Prohibition and Excise (Amended) Rules, 2022 to get his house and premises unsealed upon deposit of penalty/fine but the

same was rejected by the respondent no. 3 vide order dated 02.06.2022 by maintaining his earlier order dated 18.12.2021 without appreciating the

facts and circumstances of the case. He further submitted that being aggrieved by the order dated 02.06.2022 passed by the respondent no. 3, the

petitioner preferred Appeal No. 509 of 2022 before respondent no. 2 (Excise Commissioner, Bihar, Patna) which was also dismissed on 28.11.2022 on

the ground that the sealed house/premise was being used for preparation and storage of illicit liquor without appreciating the facts and circumstances

of the case. He further submitted that respondents no. 2 and 3 committed error in not granting the benefit of Section 57B of the Bihar Prohibition and

Excise Act read with Rule 12B of Bihar Prohibition and Excise Rules, 2021 to the petitioner who is bona fide and innocent owner of the house and the

premises in question. He further submitted that after facing full-fledged trial, the petitioner and his wife have been acquitted from all the charges and

no action has been taken place by the concerned authority up till now. Learned counsel for the petitioner relied upon the judgment of HonÃ¢â‚¬â„¢ble

Supreme Court in the case of Abdul Vahab Vs State of Madhya Pradesh reported in (2022) 13 SCC 310 wherein the HonÃ¢â‚¬â„¢ble Supreme Court has

held that:-

Ã¢â‚¬Å“The orders in confiscation proceedings and confiscation of vehicle is not to be permitted when the criminal proceedings have been culminated into

acquittal.

4. Counter affidavit on behalf of respondent no. 3 has been filed. In the said counter affidavit, it has been submitted that order dated 28.11.2022 is

passed by the respondent no. 2 (Excise Commissioner, Bihar, Patna) in Excise Appeal no. 509 of 2022 affirming the order dated 02.06.2022 passed by

the Respondent No. 3 (Additional Collector -cum- Additional District Magistrate, Nalanda) in Confiscation Case No. 564 of 2021 by which the

application under Rule 12B of Bihar Prohibition and Excise (Amendment) Rules, 2022 filed by the petitioner to get his house and its premises unsealed

upon deposit of the amount of fine, has been rejected and earlier order passed by the Respondent No. 3 on 18.12.2021 was ordered to be maintained.

Learned counsel for the State submitted that claim of petitioner that he has been acquitted by the concerned Court after full fledged trial cannot help

him to unseal the house in question which was used for manufacturing huge amount of illicit liquor. Learned counsel for the State submitted that order

passed by the concerned respondents is justified and legal on the basis of material available on record and hence, no interference is needed.

5. There has been amendment in the Bihar Prohibition and Excise Rules, 2021 and a new Rule 12(B) has been inserted which reads as under:-

12B. Release of Premises on Payment of Penalty:- (1) If any premises or part thereof has been seized or sealed by any police or excise

officer under the Act, then in terms of section-57B (2) of the Act, the Collector or an officer authorized by him, upon receipt of an

application in Form V from the owner of the said premises, may release or unseal the said premises or part thereof upon payment of such

penalty as may be ordered by the Collector or the officer authorized by him. Provided, where it is not possible to ascertain the owner of the

premises or the owner is not coming forward, the Collector or the officer authorized by him shall, after waiting for 15 days from the date of

seizure/sealing, proceed to confiscate the premises as per the provisions of the Act.

(2) The Collector or the officer authorized by him shall have due regard to the economic status of the individual, nature of his involvement

in the crime, location of the premises and the quantum of intoxicant recovered while deciding the quantum of fine to be paid by the

individual. However, the fine shall not be less than Rs. one Lakh in any case. In any case, the Collector shall not wait beyond 15 days from

the date of seizure/sealing and if during this period, the accused/owner does not pay up the penalty he shall proceed with the

confiscation/auction.

(3) Notwithstanding above, if on a report by police officer or excise officer, the Collector or the officer authorized by him is satisfied that

releasing the premises shall not be in the public interest, the Collector or the officer authorized by him shall proceed ahead with the

confiscation of the said premises or part thereof and its subsequent auction/disposal.

(4) Such penalty shall be, regardless of the outcome of the trial if any, before the Special Court, non-refundable.

(5) The owner of the Premises shall, after the release of the premises, allow the inspection of the premises as and when desired by the

authorities.

From the analysis of the aforesaid statutory provision there is clear cut provision that quantum of fine cannot be less than Rs. 1,00,000/-.

6. In the present case, from the house and premise of the petitioner, spirit and foreign liquor along with preparatory apparatus as well as other articles

were recovered and in the light of the aforementioned statutory provisions, there cannot be fine less than Rs. 1 lakh. There is nothing on record which

indicates that petitioner is accused of any offence similar nature prior to the present case.

7. Keeping in view the discussions made above, order dated 02.06.2022 passed by the respondent no. 3 (Additional Collector-cum Additional District

Magistrate, Nalanda) in Confiscation Case No. 564 of 2021 as well as order dated 28.11.2022 passed by the respondent no. 2 (Excise Commissioner,

Bihar, Patna) in Excise Appeal No. 509 of 2022 are hereby quashed.

8. On the basis of material available on record, we feel confiscation of building consisting of three floors and its auction would be too harsh on the

petitioner. Therefore, petitioner is directed to pay fine of Rs. 5,00,000/- (Rs. Five lakhs). On deposit of fine of Rs. 5,00,000/- (Rs. Five lakhs), the

house as well as premises in question be unsealed. Certified copy of this judgment shall be produced within two weeks before Respondent No. 3

(Additional Collector -cum- Additional District Magistrate, Nalanda) and within two weeks from then if the fine as provided herein is deposited, the

house as well as premises in question be unsealed. If the fine is not remitted, respondent no. 3 shall continue with the confiscation and auction

proceedings.

9. With the above observation/direction, the present petition stands disposed of.