

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1405 of 2017

Arising Out of PS. Case No.-34 Year-2017 Thana- RAMKRISHNANAGAR District- Patna

1. Kumari Punam, Proprietor of M/s Siddhi Enterprises Having its registered office at Dr. J.P. Complex, New Bus Stand Mithapur, Dhelwan Chowk, P.s.- Ramkrishanagar, Bigrahpur, Patna
2. Rajeev Ranjan, Son of Late Ram Chandra Sao, Postal Park Chowk, P.S.- Kankarbagh, Chiraiyatand, Patna- 800001.
3. Ramesh Kumar, Son of Biteshawar Ray, Water Tower, Road No. 1, Quarter No. 1, Police Station- Kotwali, District and Town Patna- 800001.

... .. Petitioners

Versus

1. The State Of Bihar , Through The Director General Of Police, Bihar , Patna Bihar
2. The Principal Secretary, Prohibition, Excise and Registration Department, Bihar, Patna.
3. The Senior Superintendent of Police, Patna.
4. The Excise Commissioner, Bihar, Patna.
5. The Assistant Commissioner, Excise, Patna.
6. The Officer In-Charge, Ram Krishna Nagar Police Station, Patna.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Arvind Kumar Tewary, Advocate Ms. Akanksha Verma, Advocate
For the State	:	Mr. Nalin Vilochan Tiwary, Advocate

CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT

Date : 09-09-2025

Heard both sides.

2. In the instant writ application, petitioners seek
following relief(s):-

*(i) For issuance of an
appropriate writ, order or direction for
quashing of First Information Report of
Ramkrishna Nagar Police Station Case*



No. 34 of 2017 instituted for the alleged offences punishable under Section 419 and 420 of the Indian Penal Code and Section 30(a), 35(c) and 32 of the Bihar Excise and Prohibition Act.

(ii) For issuance of an appropriate writ, order or direction commanding and directing the respondents to unseal the premises of the petitioner which has been sealed pursuant to institution of Ram Krishna Nagar Police Station Case No. 34 of 2017 and restore its possession with all the articles stored therein.

(iii) For restraining the respondent from taking coercive actions against the petitioner in the garb of regulating the business in exercise of power conferred under Bihar Prohibition and Excise Act, 2016 (in short of the Act).

(iv) For any other relief or reliefs for which the petitioner found entitled too.

3. Briefly stated facts of the present case is that a news item was published in daily news paper “Dainik Bhaskar” dated 09.02.2017 that in the name of energy drink, beer was being sold. It is alleged that the name of alleged energy drink is



similar to that of “Thunder Bolt” and “Kingfisher” and it was published in the daily newspaper that during test of the said energy drink, 4% to 5% alcohol content was found. It is further alleged that Excise Superintendent, Madhubani informed that Energy Drink was being sold and distributed by M/S. Siddhi Enterprises, Bigrahpur, Patna. Thereafter, Excise Inspector and two sub inspectors conducted raid and different beverages of WFM Super Strong 10000 and 100000, Thousand Bolt, Kalalon Golden, Kingfermer were found. It is alleged that Sales Manager - *Ramesh Kumar* and Accountant – *Rajiv Ranjan* were apprehended on the spot. It is further alleged that beverage containing alcohol (beer) was being sold in the name of energy drink and owner and staffs of said firm are misusing by using bottles in the shape and name of bottles that resembles branded beer.

4. Learned counsel for the petitioners has limited grievance towards quashing of FIR. Learned counsel for the petitioners has relied upon a similar and identical decision of this Hon’ble Court rendered in the case of *M/S Smart India Marketing Proprietorship and Anr. Vs State of Bihar and Ors.* (Criminal Writ Jurisdiction Case No. 627 of 2017) reported in *2018 (3) PLJR 165* and the said decision has been affirmed by



the Hon'ble Supreme Court in ***S.L.P. No(s). 600 of 2018 (arising out of Cr.WJC. No. 627 of 2017) (State of Bihar and Ors. Vs. M/S Smart India Marketing Proprietorship and Anr.)***.

He further submits that petitioners are supplier of energy drink and the alleged items namely WFM Super Strong 10000 and 100000, Thousand Bolt, Kalalon Golden, Kingfermer were seized by Excise Officials throughout the State of Bihar and it was sent to Excise Chemical Analyst, Bihar, Patna and the content of ethyl alcohol was found to be 0.2% v/v to a maximum of 0.4% v/v as mentioned in Annexure 12 of the instant writ application.

5. He further submits that firm of petitioner no. 1 has got valid license from the Deputy Director (F & VO); N.R., Ministry of Food Processing Industries, New Delhi since 1998 itself, as contained in Annexure 2 of the instant writ application. He further submits that even before the launch of said products by the company, the beverages were tested and found to be non-alcoholic and the Government also got it tested and sample was sent by the Sub-Inspector Excise, Sadar Western Circle to the laboratory and the product was found to be non-alcoholic and report to this effect was sent on 06.09.2016, as annexed in Annexure 4 of the instant writ application. He further submits



that the product of the WFM Food Products are marketed by Shrinaath Traders and vide its letter dated 18.12.2016 (Annexure 5 to the present writ application) appointed the firm of the petitioner no. 1 M/S Siddhi Enterprises, as Marketer for the entire State of Bihar of the products namely WFM Super Strong 10000 and 100000, Thousand Volt, Kalalon Golden 500000, Kingfermer. He further submits that M/S Siddhi Enterprises also has a License issued on 31.01.2017 by the Department of Health and Family Welfare, Government of Bihar, under the State Food Safety Authority, under FSS Act, 2006, which has been granted for the period from 31.01.2017 to 30.01.2020 (Annexure 7 to the instant writ application). He further submits that the products of the WFM Food Products were sent through the Shrinaath Traders, under valid challans and bills on different dates and some of the bills and receipts of the weighing units, established by the Government are annexed as Annexure 8 series of the instant writ application. He further submits that the Excise Officials are harassing the petitioners and, thus, the petitioner no. 1 (proprietor of the firm) wrote letter dated 18.01.2017 to the Excise Commissioner, Bihar to get the products examined at the Government Laboratory, as the product was non-alcoholic and the same was duly received on



the same day in the office of the Excise Commissioner (Annexure 9 to the instant writ application). He further submits that again petitioner no. 1 wrote letter dated 08.02.2017 to the Excise Commissioner, Bihar, Patna for taking samples and sending the same for government analysis, (Annexure 10 to the instant writ application). He further submits that sample was collected by the Officers of the Food Safety Authority, Darbhanga and was sent to the Government authorized test center, Mitra S.K. Private Limited, Kolkata on 28.03.2017 and vide report dated 16.02.2017 (Annexure 11 to the instant writ application) the product was tested and no alcoholic content was found in it. He further submits that report was sent to respective excise officials of all districts of Bihar and in all such report ethyl alcohol content was found to be 0.2% v/v to maximum of 0.4% v/v, (Annexure 12 series to the instant writ application). He further submits that even if the entire prosecution story is taken into account, the goods of the petitioners are non alcoholic beverage and it does not fall under the ambit of the Bihar Excise and Prohibition Act. Learned counsel for the petitioners submits that the facts of the Cr. WJC. No. 627 of 2017 (M/S Smart India Marketing Proprietorship and Anr. Vs. The State of Bihar & Ors.) is totally identical with the present case and in the light of



the aforesaid decision, no offence as alleged in the FIR is made out against the petitioners and, hence, the FIR is liable to quashed. He further submits that during the course of pendency of instant writ application the premises have already been de-sealed by the Officer In-charge Ramkrishna Police Station, upon the order of Collector, Patna. He further submits that samples of petitioner’s product, which was seized from different districts, were tested on different dates and the last test was conducted on 14.02.2017. He further submits that the materials which were seized, was not fair as it is not on record as to what is the source that the material which was seized from the petitioner’s product were tested or some other material were tested.

6. Learned counsel for the petitioners has produced BIS specification of carbonated beverages non-alcoholic beer and the same is not disputed by the learned counsel for the respondent. Hence, is being reproduce below:-

**Indian Standard
CARBONATED BEVERAGES -
NON-ALCOHOLIC BEER – SPECIFICATION**

1 SCOPE This standard prescribes the requirements and methods of sampling and test for non-alcoholic beer.	Amount of saccharin in the product shall not exceed by 100 mg/kg when determined by the method given in Annexure A of IS 2346 : 1973.
2 REFERENCES The Indian Standards listed in	4.5 Freedom from Added Colouring Matter



<p>Annexure A are necessary adjuncts to this standard.</p> <p>3 TERMINOLOGY</p> <p>3.1 Non-Alcoholic Beer</p> <p>It is a beverage containing less than 0.5 percent ethyl alcohol by volume.</p> <p>4 REQUIREMENTS</p> <p>4.1 General</p> <p>Non-alcoholic beer shall be the product of alcoholic fermentation or otherwise of a mash in potable water of malted barley and hops or concentrate of hops with or without the addition of other malted or unmalted cereals or other carbohydrate preparations.</p> <p>4.2 Freedom from Harmful Ingredients</p> <p>Non-alcoholic beer shall be free from any ingredients injurious to health.</p> <p>4.3 Preservatives</p> <p>Non-alcoholic beer may contain preservatives permitted under the Prevention of Food Adulteration Rules, 1954.</p> <p>4.4 Artificial Sweetners</p> <p>Non-alcoholic beer shall be free from artificial agents except saccharin.</p>	<p>Non-alcoholic beer shall be free from any artificial colour except caramel.</p> <p>4.6 Freedom from Added Alcohol</p> <p>Non-alcoholic beer shall be free from any added alcohol.</p> <p>4.7 Carbon Dioxide Content</p> <p>Non-alcoholic beer shall be charged with carbon dioxide before bottling.</p> <p>4.8 Pasteurisation</p> <p>Bottled non-alcoholic beer shall be effectively pasteurized, if required.</p> <p>4.9 Organoleptic Requirements</p> <p>Non-alcoholic beer shall be clear and have the characteristic colour, taste, bouquet and foam of its type.</p> <p>4.10. Hygienic Conditions</p> <p>Non-alcoholic beer shall be manufactured in premises built and maintained under hygienic conditions in accordance with IS 5837: 1970</p> <p>4.11 The material shall also conform to the requirements given in Table 1.</p>
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Sl. No.	Characteristic	Requirement	Method of test,
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(1)	(2)	(3)	Ref to (4)
(i)	Ethyl alcohol content, percent by volume at 15/15C, Max	0.5	IS 3752:1988
(ii)	pH	3.5 to 4.5	IS 3865: 1978
(iii)	Carbon dioxide,v/v	2.5 to 3.0	IS 2346: 1973
(iv)	Residue on evaporation, percent(m/v)	5 to 10	IS 3752:1988
(v)	Arsenic, mg/kg, Max	0.25	IS 6854:1973
(vi)	Lead, mg/kg, Max	0.5	IS 6854:1973
(vii)	Copper, mg/kg, Max	1.5	IS 6854:1973
(viii)	Iron, mg/kg, Max	0.5	IS 6854:1973
(ix)	Total plate count, per ml, Max	50	IS 5402:1969
(x)	Co li form count, in 100 ml	0	IS 5401:1969
(xi)	Yeast and mould count	2	IS 5403:1969

8. Learned counsel for the State submits that samples of the products as mentioned in Annexure A were collected from different districts of Bihar which on chemical analysis by the Excise Chemist, Bihar, Patna have been found to contain ethyl alcohol from 0.2% to 0.4% which is evident from the report annexed as Annexure-12 to this writ petition. He further submits that the samples of the product-liquid drink contained in sealed bottles marketed by the petitioner’s firm seized from Patna godown and the same was tested on 31.03.2017 by the Forensic Science laboratory, Patna, Bihar where ethyl alcohol content was found to be 2.24% v/v to 2.58%v/v which is evident from the report of the Forensic Science Laboratory, Patna. Therefore, the variation of alcohol content from 0.2% to 2.58% in beverages is in substance intoxicating in nature (Annexure A of the counter affidavit filed on behalf of Respondent No. 2, 4 and 5). He further submits



through paragraph 10 of the counter affidavit that as per the prevalent prohibition policy, the State have zero tolerance regarding beverages containing alcohol. From the report of the Excise Chemist and FSL, it appears that the samples of the products marketed by the petitioner's firm on chemical examination have been found positive in alcoholic content in varying percentage. It is submitted that selling of beverages containing alcohol contents would defeat and frustrate the uncompromising policy of prohibition imposed by the State towards achieving its constitutional goal enshrined under article 47 of the Constitution of India. It is humbly submitted that the percentage of ethyl alcohol found in the beverages is that of lager beer quality. He further submits through paragraph 11 of the counter affidavit that the provision of Section 13 read with definition of 'alcoholic', 'intoxicant' and 'liquor' defined under Sections 2(3), 2(40) and 2(44) of the Bihar Prohibition and Excise Act unambiguously provides for complete prohibition of all kind of beverages containing alcohol, irrespective of its strength/volume. He further submits through paragraph 12 of the counter affidavit that after imposition of complete prohibition in the State of Bihar, the petitioner-firm started marketing/selling beverages containing Alcohol of varying



degrees under the garb of fruit beer/ energy drinks and even the products marketed by the petitioner's firm have been named as 'Kingfarmer', Kingfeemer', 'thousand Volt', which matches the nomenclature of popular brands of Alcoholic Beer such as Thunderbolt, Kingfisher etc. It is further submitted that the petitioners passing of intoxicating beverages in bottles similar to popular brands of beer under the garb of energy drinks.

9. It is necessary to discuss the relevant Laws which reads as under:-

10. Section 2(3), Section 2(4) and Section 2(6) of the Bihar Prohibition and Excise Act reads as under:-

Section 2(3) of the Act defines the word “alcoholic” as follows:-

“2(3) “alcoholic” means a solution or mixture containing alcohol and being of any strength and purity.”

Section 2(4) of the Act defines the term “alcoholic beverage or portable liquor” as follows:-

“2(4) “alcoholic beverage or portable liquor” means any beverage containing alcohol in conformity with the BIS standard which may be intoxicating and is fit for human consumption.”

Section 2(6) of the Act defines what is “BIS Standard” as follows:-



*“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.”*

10. It is well settled law that 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.

11. 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.

12. In the present case, ethyl alcohol content is



not more than 0.4%v/v and only 0.2 % v/v to 0.4% v/v has been found by the chemical analyst as per Annexure-12 series of the instant writ application. 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 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.

13. The law is 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.

14. Learned counsel for the respondent has no reason to dispute the Annexure - 12 series to the instant writ application as the same was tested by Excise Chemical Analyst, Bihar, Patna. It has already been submitted by the learned counsel for the petitioners that in the earlier test no alcoholic content was found as it was discussed in the foregoing



paragraph but the test which was conducted after near about one month and fifteen days wherein alcoholic content was found for which petitioner cannot be held liable as alcoholic content was found on account of fermentation which had taken place due to span of time. It has already been contended by petitioners' counsel that materials which were seized was not fair as what is the source that the material which was seized from the petitioners' product were tested or some other material were tested, it is not on record and material was doubtful as it was already clarified in the earlier case on similar and identical issue i.e. Cr. WJC No. 627 of 2017 (M/S Smart India Marketing Proprietorship Vs. State of Bihar). The law is well settled that the offence is to be determined on the date of its commission and if on the date of seizure, the energy drink was not containing any alcoholic substance, the offence was not committed as per the provisions of the Act.

15. In the light of the aforesaid facts and circumstances of the case and discussions made above, First Information Report of Ramkrishna Nagar Police Station Case No. 34 of 2017 is fit to quashed and, accordingly, the same stands quashed.

16. Accordingly, the writ application stands



allowed.

17. Pending Interlocutory Applications, if any,
stands disposed of.

(Alok Kumar Pandey, J)

alok/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	13.09.2025.
Transmission Date	13.09.2025.

