IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.610 of 2014

==

1. Sheoji Sah Son of Late Baidyanath Sah R/o Ward No. 14 Kunj Gali, Nagar Panchayat Sheohar, P.S. & District- Sheohar

.... Petitioner.

Versus

1. The State of Bihar through D.G.p., Home Police, Patna.
2. The Superintendent of police Sheohar.
3. The Officer Incharge, Sheohar, P.S. Sheohar.
4. Md. Jahangir Alam, Son of Late Md. Kalimullah, Sr. Deputy Collector, Sheohar, R/o Fatehpur Chain Tola, p.S. Awatar Nagar, District- Saran.

.... Respondents.

==

Appearance :
For the Petitioner : Mr. Rajesh Mohan, Advocate.
For the Respondents : Mr. Narsing Tanti, A.P.P.

==

CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD
ORAL ORDER

8 11-05-2015 Heard learned counsel for the petitioner and learned counsel for the State.

This petition has been filed for quashing the First Information Report of Sheohar P.S. Case No. 75 of 2014 (G.R. No. 227 of 2014) instituted for offence under Section 47(A) of the Bihar Excise Act.

It is alleged that on secret information received by the District Magistrate, Sheohar on 18.04.2014, that Shambhu Shah and the petitioner Sheoji Sah doing business of Foreign wine and country made liquor from their house. Thereafter, a team reached at the house of Shambhu Shah and the petitioner Sheoji Sah at Kunj Gali, the petitioner Sheoji Sah fled away from there. From the house of the petitioner 8 cartoons beer, 5 cartoons whisky and 2 bags country made pouch recovered and the same was seized.

Thereafter, aforesaid team reached the house of Shambhu Sah and from there seized 168 pieces of King Fisher beer of 650 ml., 96 pieces of Macdowell whisky of 180 ml., 26 pieces of Macdowell whisky of 375 ml. , 19 pieces of Macdowell whisky of 180 ml. and 13 pieces of Macdowell whisky of 375 ml. for which seizure list has been prepared with regard to the seizure of 183 liter of the foreign and country made liquor.

Learned counsel for the petitioner has filed a petition for quashing the F.I.R. on two grounds that Section 47A of Excise Act is applicable to a Company and is not applicable to an individual person. It has been further been contended that Section 74 of Bihar Excise Act provides that any person cannot proceed for search without a warrant and if, he so, proceed then he must record the ground of his believe for entire search.

Learned counsel for the State however submits that recovery has been made from the house of the petitioner hence a cognizable offence is made out for lodging or institution of F.I.R. against the petitioner by the authorised officer.

It is true that Section 47 A of Excise Act is applicable to a Company and Company defined as body Corporate and includes a Firm or other association of individual. However the allegation made is possession of country made liquor in an offence under Section 47 Excise Act hence merely quoting wrong Section in F.I.R. is no ground to quash the F.I.R. when the allegation made makes out an offence and so far the defence set up that there is non-compliance of Section 74 of Excise Act that the authority concern has for search and seizure by entering the premises without recording the ground is required to be examined at the stage of trial and the F.I.R. cannot be quashed on this ground at this stage.

Learned counsel for the petitioner submits that petitioner has been falsely implicated in this case.

Regard being had to the fact allegation against the petitioner makes out an offence. However, at this stage for quashing the F.I.R., this Court cannot go into the question of fact whether allegation made against the petitioner is true or false. This Court at this stage cannot go into the question whether the authority proceeded for search after recording the ground of his belief for search for quashing the F.I.R. It can only be taken at the trial.

Hence I do not find any merit to entertain quashing the F.I.R. Accordingly, this petition is dismissed.

However, the petitioner may have liberty to raise issue at the stage of submission of charge sheet.

m.p.

(Gopal Prasad, J)

U		T	