IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.47473 of 2015

Arising Out of PS.Case No. -2 Year- 2005 Thana -GOVERNMENT OFFICIAL COMP. District- BHABHUA (KAIMUR)

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Kamlesh Singh Son of Daya Singh resident of Dewhaliya, P.S. Ramgarh, District - Kaimur at Bhabua.

.... Petitioner

Versus

The State of Bihar

.... Opposite Party

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Appearance :
For the Petitioner/s : Mr. Dharmendr Kumar Singh, Advocate
For the Opposite Party/s : Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 18-02-2016

By way of the present application under Section 482 of the Code of Criminal Procedure, 1973 (for short "CrPC"), the petitioner seeks quashing of the order dated 15.10.2014 passed by the learned Special Judge, Kaimur at Bhabua in Excise Case No. 2 of 2005 by which he has summoned the petitioner to face the trial under Section 47(a) of the Excise Act and under Section 20(b)(ii)(A) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "NDPS Act").

2. Learned counsel for the petitioner has contended that the impugned order is bad in law in view of the mandatory provisions prescribed under Section 468 CrPC. He has further

contended that maximum punishment prescribed for the offence punishable under Section 47(a) of the Excise Act is three years whereas the maximum punishment prescribed for the offence punishable under Section 20(b)(ii)(A) of the NDPS Act is six months or with fine which may extend to Rs.10,000/- or both. He has also contended that the prosecution report was filed in the Court on 13.09.2004 whereas the cognizance has been taken by the learned Special Judge, Kaimur at Bhabua on 15.10.2014. The period of limitation for taking cognizance of the offence could be three years only, if the offence with imprisonment for a term exceeding one year but not exceeding three years in terms of Section 468 CrPC and hence, the impugned order is fit to be set aside.

3. On the other hand, learned counsel for the State has submitted that 125 grams of *ganja* and huge quantity of illicit liquor was recovered from a place in possession of the petitioner and since then, the petitioner has been absconding and evading his appearance before the Court.

4. Be that as it may, the case is based on prosecution report submitted by Sub-Inspector of Excise. The prosecution report is deemed to be a complaint. Admittedly, the same was filed in the Court on 25th January, 2015 and numbered as

Excise Case No. 2 of 2005. It would be deemed in law that the Magistrate, who had seen the prosecution report, had taken cognizance of the offence on 25.01.2005 itself, i.e., within five months from the date of alleged occurrence and seizure of contraband articles. The subsequent order dated 15.10.2014 which is under challenge before this Court in the present case is not an order taking cognizance but an order by which the petitioner has been summoned to face trial. The said order has been passed in exercise of powers conferred upon the Court under Section 204 CrPC.

5. In that view of the matter, I do not find any merit in the submission made by the learned counsel for the petitioner.

6. Accordingly, the application, being devoid of any merit, is hereby dismissed.

(Ashwani Kumar Singh, J.)

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