

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.1890 of 2017

Arising Out of PS.Case No. -null Year- null Thana -null District- WESTCHAMPARAN(BETTIAH)

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Brijesh Kumar Kushwaha @ Brijesh Kumar, Son of Shri Ramashray Mishra,
Resident of Village- Chauria Tola, Police Station- Jagdishpur, District- West
Champaran.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Excise Dept., of Bihar, Patna.
2. The Deputy General of Police, Bihar, Patna.
3. The Inspector General of Police, Patna.
4. The Deputy Inspector General of Police, Bettiah.
5. The Senior Superintendent of Police, Bettiah.
6. The Superintendent of Police, Bettiah.
7. The Officer In-charge, Bettiah,

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Bindhyachal Singh, Adv.
: Ms. Smriti Singh, Adv.
For the Respondent/s : Mr. Vivek Prasad, Adv.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 07-11-2017

Heard learned counsel for the parties.

2. This writ application has been preferred for quashing the F.I.R. of Bettiah Muffasil P.S.Case No. 360 of 2017 registered on 24.08.2017 under Sections 30(D), 35 and 41 of the Bihar Prohibition and Excise Act to the extent of implication of the petitioner.

3. Submission of the learned counsel for the petitioner is that a bare perusal of the F.I.R. would reveal that the ingredients of none of the offences are made out against the petitioner, hence



criminal proceeding of the petitioner in the aforesaid case would amount to abuse of the process of the court.

4. Learned counsel for the State-respondent does not dispute factual position of this case nor is willing to file any counter affidavit in this case.

5. According to F.I.R., the petitioner is proprietor of M/s R.K. Petrol Pump at Sikatia in the district of Siwan. Near the Petrol Pump from two tank lorries spirit was being taken out from the upper mouth used for filling up the Tank in plastic jerkins. Seven persons were apprehended there involved in draining out the spirit and they disclosed that Ranjit Mukhiya uses the spirit for preparation of liquor. Only statement regarding the petitioner in the F.I.R. is that the petitioner had knowledge of what was going on thereat.

6. Contention of the petitioner is that the Petrol Pump is a public place, several vehicles carrying petroleum products use to park thereat and the petitioner is not expected to have knowledge of each and every affairs going on in respect of individual vehicle. Moreover, the F.I.R. clearly discloses the name of persons who were involved in draining out the spirit illegally from those tank lorries. Therefore, vicarious liability of the petitioner for criminal act committed by others cannot be assumed in the facts and circumstances of this case.



7. I find substance in the submission aforesaid. A bare perusal of the F.I.R. does not disclose that the petitioner had committed any offence. There is suspicion of knowledge of the petitioner about the act alleged in the F.I.R. though the petitioner was not present there nor the petitioner has such criminal antecedent. In the circumstances, prosecution of the petitioner in the aforesaid case would amount to abuse of the process of the court. Accordingly, the aforesaid F.I.R. stands quashed only against the petitioner and this writ application stands allowed.

(Birendra Kumar, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.11.2017
Transmission Date	10.11.2017

