

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.28041 of 2011

Arising Out of PS. Case No. -128 Year- 2007 Thana - Ahiyapur District- MUZAFFARPUR

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1. Rambali Rai, son of Baijnath Rai
2. Baijnath Rai, son of Late Horil Rai
3. Vindheshwar Rai, son of Baijnath Rai
Resident of Village- Dadar Kolhua, P.S. Ahiyapur, District Muzaffarpur

.... Petitioners

Versus

The State of Bihar.

.... Opposite Party

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Appearance:

For the Petitioners : Mrs. Bela Singh,
Mr. Rajeev Ranjan, Advocates.
For the Opposite Party : Mr. J.K. Singh, APP

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 17-05-2017

Heard learned counsel for the petitioners and learned
counsel for the State.

2. The present petition has been filed for quashing the
order dated 17.05.2008 passed by learned Chief Judicial Magistrate,
Muzaffarpur, taking cognizance against the petitioners in G.R. No.
1019/07, Trial No. 1598 of 2011 arising out of Ahiyapur P.S. Case No.
128 of 2007 for the offence under Section 47(a) of the Excise Act.

3. According to the prosecution case, the Officer-in-Charge
of Ahiyapur Police Station recorded his self-written statement on
10.04.2007 that he proceeded to *Panchali Beer Bar* which was said to
have been illegally selling huge quantity of liquor. Upon arrival at the



said bar, the petitioner no. 1 was found sitting at the counter while 10 to 12 persons fled away. A large quantity of the liquor was seized, as neither the license of the beer bar nor documents relating to the liquor were produced. It was alleged that the beer bar was running during late hours of the night for selling a huge quantity of liquor which appeared to be spurious and dangerous to health, thereby violating the provisions of Section 47(a) of the Excise Act and Section 13 of the Dangerous Drugs Act, 1930. An F.I.R. was accordingly instituted and investigation was conducted by A.S.I. Md. Najmuddin who submitted a final report in terms of Charge sheet No. 228/08 against four named accused persons including the petitioners under Section 47(a) of the Excise Act.

4. Learned counsel for the petitioners submits that the entire criminal proceeding against the petitioners is wholly illegal and unsustainable in law. It is submitted that the impugned order taking cognizance in respect of the charge sheet submitted after investigation by the A.S.I. is completely illegal as the A.S.I. has no jurisdiction or power to conduct investigation for the purposes of offences under the Excise Act. This aspect of the matter has been decided by this Court and is no longer *res integra*, as again noticed in Criminal Miscellaneous No. 3059 of 2009 (Nagendra Kumar Vs. The State of Bihar) wherein it has been held as follows:-

“In the instant case, investigation has been done, of course at the direction of the Officer-in-Charge but by an A.S.I. of



Police the earlier decision in the case of Kamla Devi comes into play, as being consistent view of this Court, also referred and relied upon in a case of Akthar Ali and another versus State of Bihar, BBCJ, 2010 (2)-V-253, wherein similar point was involved.

On careful perusal, I find that since in the instant case investigation was done by an A.S.I. of Police who has submitted charge sheet and cognizance has been taken thereon it is not sustainable under law. Consequently impugned order is set aside. Accordingly, this application stands allowed."

5. It is further stated that in any event *Panchali Beer Bar* was a duly licensed bar vide license no. 07/2007-08 issued by the Collector-cum-Superintendent, Excise Department, Muzaffarpur granted in the name of Smt. Ram Kali Devi, wife of the petitioner no. 2 and mother of the petitioner nos. 1 and 3. The entire quantity of seized liquor was subsequently released vide order dated 02.05.2007 passed by the Chief Judicial Magistrate, Muzaffarpur in favour of the petitioner no. 1 who had been authorized by the licensee Ram Kali Devi, after verification of all relevant documents.

6. Learned A.P.P appearing on behalf of the State appears and has been heard. He has not been able to point out any provision of law or any notification, according to which the A.S.I. was empowered to conduct investigation for the purposes of Section 47(a) of the Excise Act.



7. Having heard the parties and on careful consideration of the materials on record, this Court finds merit in the petition. It is settled by decisions of this Court that an A.S.I. is not empowered to carry out investigation in respect of contraventions under Section 47 of Excise Act. In the present case, investigation has been conducted by the A.S.I. Md. Najimuddin, who has submitted Charge sheet No. 228/08 dated 31.03.2008 (Annexure-2) which is thus contrary to the settled law. Consequently, the impugned order of cognizance cannot also be sustained.

8. In such circumstances, this Court is of the view that continuance of the criminal prosecution against the petitioners would amount to abuse of process of court and accordingly the impugned order dated 17.05.2008 passed by the learned Chief Judicial Magistrate, Muzaffapur taking cognizance in G.R. No. 1019 of 2007, Trial No. 1598 of 2011 arising out of Ahiyapur P.S. Case No. 128 of 2007 is hereby quashed and the petition stands allowed.

9. Registry is directed to send back the lower court records without any delay.

(Vikash Jain, J)

Md. Ibrarul/BT

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	24.05.2017
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