

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.27836 of 2013

Arising Out of PS.Case No. -481 Year- 2011 Thana -GOVERNMENT OFFICIAL COMP. District-
PATNA

- =====
1. Jai Nath Prasad S/o Hari Shankar Sah, resident of village- Mirganj, Near Jahazi Kothi, P.S. Nagar Thana, Ara, District Bhojpur.
 2. Sunil Kumar Sah S/o Shankar Sah, resident of village- Sinha, P.S. Barhara, District Bhojpur.

.... Petitioner/s

Versus

The State of Bihar.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Dr. Anand Kumar, Advocate

For the Opposite Party/s : Mr. Ashok Kr. Singh, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 11-09-2017

1. Heard both sides and perused the record.

2. This criminal miscellaneous application under section 482 of the Code of Criminal Procedure has been filed to quash the order dated 27th May 2013 passed by learned Judicial Magistrate 1st Class, Patna in Case No. 481 (C-II)/2011 whereby and whereunder the learned Magistrate finding *prima facie* case against the petitioners, refused to discharge them from the offences under sections 47 (a) and 13 (f) of the Bihar Excise Act.

3. It appears that the prayer of petitioners for discharging them from the offence in question, was refused by the learned Court below. The petitioners and one Sanjay Kumar were



allegedly carrying Mahua Flower by a truck bearing Registration No.BR-3G-4301. The petitioners are truck owner and driver. The said truck was apprehended by the Excise Department and 350 bags each containing 40 Kg. Mahua Flower, total 14000 Kg. were seized, as per seizure list, in presence of witnesses. The contention of the petitioners is that the said Mahua Flower was purchased by co-accused and it was being transported from Varanasi (UP) to Sahebganj (Jharkhand). The truck was seized on National Highway on way to Jharkhand and so, no offence under the Excise Act is made out against the petitioners. The learned Magistrate has passed the impugned order in mechanical manner without appreciating the provisions of Act and so, both the petitioners deserve to be discharged.

4. The learned Additional Public Prosecutor on the other hand, opposed the submission.

5. On perusal of persecution report, I find that the truck in question was apprehended by the Excise Team which was loaded with 14000 Kg. Mahua Flower The defence of the accused is that it was being transported from Varanasi (UP) to Sahebganj (Jharkhand), cannot be taken into consideration at this stage. The applicability of provisions of Excise Act shall be considered at the time of trial. The learned Court below has rightly refused to discharge the petitioners.



6. In view of above facts, I do not find any merit in the present criminal miscellaneous application and the same is accordingly, dismissed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
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