

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.1042 of 2017

Arising Out of PS.Case No. -null Year- null Thana -null District- NAWADA

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Rajeev Ranjan son of late Ramadhin Prasad, R/o. village-Pathraura (Duhai Suayi), P.S. Chhabilapur, District- Nalanda, presently working as Senior Auditor in the office of Divisional Audit Office (DRM Building) in the Department of Indian Audit and Accounts Department, South East Central Railway, Raipur, State of Chhatisgarh.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Department of Home (Police), Government of Bihar, Patna.
3. The Director General of Police, Government of Bihar, Patna.
4. The Superintendent of Police, Nawada.
5. The Deputy Superintendent of Police, Nawada.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bishnu Kant Dubey, Advocate

For the Respondent/s : Mr. Suman Kumar Jha, AC to AAG-3

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 04-09-2017

Heard learned counsel for the parties.

2. There is no dispute that petitioner is owner of Scorpio vehicle bearing registration No.BR-01-PG-5275. On 16.03.2017 the Officer-in-Charge of Govindpur P.S. intercepted and seized the vehicle as it was carrying 59 pieces of foreign liquor weighing 750 ml each. For the aforesaid offence Govindpur P.S. Case No.24 of 2017 was registered under Section 30(a) of the Bihar Prohibition and Excise Act, 2016.

3. The petitioner has prayed for quashing of the aforesaid F.I.R. by contending that the petitioner has also been



made accused in this case maliciously as he was not present at the time of occurrence. He is a public servant and he was on duty on the date of occurrence. Moreover, by a power of attorney executed on 28.01.2017, the petitioner had authorized the use of the vehicle to his brother. Even the F.I.R. does not disclose that petitioner was instrumental in carrying the said liquor. Implication of the petitioner was made simply because he is the owner of the vehicle. Learned counsel further submits that the case cannot be investigated by an officer below the rank of Sub-Inspector of Police in view of the provisions of Section 78 of the Bihar Prohibition and Excise Act, 2016, whereas investigation of this case has been made over to an Assistant Sub-Inspector of Police.

4. On the other hand, learned counsel for the State-respondents drew attention of the Court to sub-Section (2) of Section 32 of the aforesaid Act, which provides for presumption as to commission of offence in certain cases. Sub-Section (2) of the said section is relevant for the purpose, which is being reproduced below:

“Where any equipment, machinery, animal, vessel, cart, vehicle, conveyance or any premises is used in the commission of an offence under this Act, and is liable to confiscation and/or liable to be sealed, the owner or occupier thereof shall be deemed to be



guilty of such offence and such owner or occupier shall be liable to be proceeded against and punished accordingly, unless he satisfies the Court that the offence was committed without his knowledge or that he had exercised due care in the prevention of the commission of such an offence.”

5. A pare perusal of the aforesaid provision brings the owner of the vehicle within the presumption of commission of the offence unless the accused satisfies the Court that offence was committed without his knowledge and that he had exercised due care in the prevention of commission of such an offence.

6. The aforesaid rebuttal can be only at the stage of trial and not at the stage of quashing of the F.I.R. unless there is strong material in support of the defence. Hence, there is no merit in the prayer of quashment of the F.I.R.

7. The Superintendent of Police, Nawada, is directed to get the matter investigated by a competent person.

8. With the aforesaid observation, this writ application stands dismissed.

(Birendra Kumar, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	NA
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