**IN THE HIGH COURT OF JUDICATURE AT PATNA**
**Criminal Miscellaneous No.47319 of 2013**

Arising Out of PS. Case No.-23 Year-2012 Thana- GOVERNMENT OFFICIAL COMP. District- East Champaran

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1. KANHAIYA SAH S/O LATE MADHO LAL SAH RESIDENT OF VILLAGE- SEMRA, P.S.- TURKAULIA, DISTRICT- EAST CHAMPARAN.
2. PANNA LAL SAH S/O DHRUV SAH RESIDENT OF VILLAGE- SEMRA, P.S.- TURKAULIA, DISTRICT- EAST CHAMPARAN.

... ... Petitioner/s

Versus

The State Of Bihar

... ... Opposite Party/s

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**Appearance :**
For the Petitioner/s : Mr. Sunil Kumar No.III
For the Opposite Party/s : Mr. JHARKHANDI UPADHYAY(APP)

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**CORAM: HONOURABLE MR. JUSTICE S. KUMAR**
**ORAL JUDGMENT**
**Date : 16-08-2017**

Heard learned counsel for the parties.

The present quashing application under Section 482 of the Cr.P.C has been filed for quashing the order dated 09.01.2013, passed by the learned Chief Judicial Magistrate, Motihari, East Champaran in Excise Case No. 23 of 2012 taking cognizance against the petitioners under Section 47(a) of the Bihar Excise Act, 1915.

Briefly stated, the facts of the case is that on confidential information received by the informant-Kumar Dhananjay, Sub Inspector Excise, Sadar Motihari that one Nevy Blue Colour Mahindra Truck was standing on southern side of

Motihari Areraj Road, near Matiyariya Primary School which was beside “Maa Bhawani” Petrol Pump under Harsidhi police station on which country made liquor containing 200 litres each in 15 plastic drams were loaded and concealed by Tripal.

After receiving the confidential information, the Excise Officials searched the said truck and found country made liquor containing 200 litres which was seized. It has been further alleged in the prosecution report that during the search of the vehicle, some documents were recovered which were verified from the office of District Transport Officer, Muzaffarpur, as to who is the owner of the vehicle then it was found that Kanhaiya Sah son of late Madho Lal Sah was the owner of the vehicle and has been made accused in the said case. It has been further alleged in the prosecution report that the two accused persons on seeing the Excise officials fled away from the seized vehicle and while they were fleeing they were identified by the two witnesses as well as the official witnesses. On the basis of the seizure and investigation made by the Excise officials a complaint was filed before the Chief Judicial Magistrate, Motihari on 11.10.2012 and the same was registered on 11.10.2012 vide Excise Case No. 23 of 2012.

After going through the prosecution report and the materials available on record, the court below took cognizance of the offence under Section 47(a) of the Bihar Excise Act, vide its order dated 09.01.2013 against the accused-petitioners.

The petitioners have challenged the said order dated 09.01.2013 taking cognizance against the petitioners for the offence punishable under Section 47(a) of the Bihar Excise Act, 1915, on the ground that the mandatory provisions as envisaged in the Bihar Excise Act, 1915 has not been followed by the prosecution. It has been stated by the learned counsel for the petitioners that the provision of Section 78(1)(a) of the Bihar Excise Act, 1915, has not been followed while making search and seizure of the alleged country made liquor. It has been further alleged that the articles of the seizure list were never produced before the court below which is mandatory under Section 82 of the Bihar Excise Act, 1915, as such the order taking cognizance is bad in law.

It has been submitted by learned counsel for the State that on the basis of prosecution report made by the Excise officials, cognizance against the petitioners has been taken under Section 47(a) of the Bihar Excise Act, 1915. It has been further submitted that on bare perusal of the complaint and prosecution report, it is apparent that accused were identified by the witnesses as well as official witnesses while they were fleeing away from the place of occurrence. It has been further submitted that the information made available by the District Transport Officer, petitioner-Kanhaiya Sah is the owner of the vehicle from which alleged country made liquor was seized and as such the case has been registered under Section 47(a) of the Bihar Excise Act, 1915.

On the basis of the materials available before the court below, the court took cognizance against the petitioners for the offence punishable under Section 47(a) of the Bihar Excise Act, 1915. It has been contended that prima facie case has been found to be made out against the accused-petitioners and at the time of taking cognizance, the defence of the accused cannot be considered. It has been further stated that if there is non-compliance of the mandatory provisions of the Excise Act, the prosecution will suffer but that does not vitiate the order of the court below of taking cognizance.

At the stage of taking cognizance duty of court is only to see if any offence is made out or not. Any defence to be taken by the petitioners is to be raised only at subsequent stage and is not to be raised in the initial stage of prosecution. When the Magistrate has taken cognizance of an offence, the power of

High Court to interfere is only to a limited extent. The High Court cannot substitute its view for summoning order passed by trial court. While exercising inherent jurisdiction under Section 482 of the Cr.P.C, High Court cannot appreciate the evidence and its truthfulness or sufficiency as it is the function of the trial court.

For the reasons stated this court is not inclined to interefere in the order passed by the court below under Section 482 of the Code of Criminal Procedure.

However, liberty is granted to the petitioners to raise all the points which have been raised here at the time of framing of charge before the court below.

Subject to the aforementioned observation and liberty, this application is dismissed.

**(S. Kumar, J)**

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