

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.35887 of 2012

Arising Out of PS.Case No. -44 Year- 1990 Thana -null District- BUXAR

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Megh Nath Singh Son Of Anant Singh Krjesident Of Village Khaira, P.S. Sahar,
District - Bhojpur At Ara.

.... Petitioner/s

Versus

The State Of Bihar.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Surendra Kumar Singh, Adv.
Tulika Singh, Adv.

For the State : Mr. B. N. Pandey, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 07-09-2017

1. Heard learned counsel for the petitioner and the State.

2. This application has been filed for quashing the order dated 09-04-2001 passed by learned Chief Judicial Magistrate, Buxar in Dumraon (Krishna Brahm) P.S. Case No. 44 of 1990 by which, the learned Magistrate after holding inquiry u/S 202 Cr.P.C. has found prima facie case against the petitioner for the offence under Sections-47A of the Excise Act.

3. It has been submitted that the instant case has been registered on 07-04-1990. It has been submitted that police after investigation, submitted charge sheet for the offence u/S 47(A) of the Excise Act on 31-03-1991. Cognizance has been taken by the court below by the impugned order dated 09-04-2001 for the offence u/S



47(A) of the Excise Act. Counsel for the petitioner has submitted that the aforesaid order of cognizance is apparently illegal as the same is hit by Section-468 of the Cr.P.C. where there is bar in taking cognizance after lapse of a period of limitation.

4. After perusing the impugned order as well as written report, this court finds that date of occurrence has been described as 07-04-1990. The charge sheet has been submitted by the police after completing investigation on 31-03-1991. Thereafter, cognizance has been taken by the court below by the impugned order in the year, 2001.

5. Section-468 Cr.P.C. runs as follows:-

Bar to taking cognizance after lapse of the period of limitation- (1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2) The period of limitation shall be-

- (a) six months, if the offence is punishable with fine only,
 - (b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;
 - (c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.
- (3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.

6. In terms Section-47(A) of the Excise Act, the accused



shall be punished with imprisonment for a term which may extend to three years and shall be liable to fine which may extend to five thousand Rupees and in default of payment of fine, he shall be punished with a further imprisonment for a term which may extend to one year.

7. In terms of provision of 468(3) of the Cr.P.C., the period of limitation will be three years. Cognizance in this case has been taken beyond the period of limitation in terms of provision of 468(3) of the Cr.P.C.

9. Therefore, order dated 09-04-2001 passed by learned Chief Judicial Magistrate, Buxar in Dumraon (Krishna Brahm) P.S. Case No. 44 of 1990 along with entire criminal proceeding against the petitioner is quashed.

10. This Cr. Misc. Application is ***allowed***.

(Sanjay Priya, J)

A.K.V./-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	22-09-2017
Transmission Date	22-09-2017

