IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.5171 of 2012

Arising Out of PS.Case No. -136 Year- 2010 Thana -Hisua District- NAWADA

==

1. Rana Vijoy Prakash S/O Late Jagdish Bhagat R/O Navin Nagar, P.S.Nawadah, Distt-Nawadah

.... Petitioner/s

Versus

1. The State Of Bihar

.... Opposite Party/s

==

Appearance :

For the Petitioner/s : Mr. Satyabir Bharti
Ms. Aparna Arun

For the Opposite Party/s : Mr. Humayu Ahmad, APP

==

CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 05-09-2017

This application under Section 482 of the Code of Criminal Procedure has been filed to quash the order dated 16.11.2011 passed by the learned Judicial Magistrate, 1st Class, Nawadah in G.R. No. 1930 of 2010 arising out of Hisua P.S. Case No. 136 of 2010 whereby and whereunder the petitioner's prayer under Section 239 of the Cr.P.C. to discharge him from the offence has been rejected.

2. Heard the learned counsel for the petitioner and the learned APP for the State.

3. The above case was registered on the self statement of

S.H.O. of Hisua Police Station. The informant conducted raid at the liquor shop of this petitioner and seized a large number of liquors as detailed in F.I.R. and registered the case under Section 273 of the Indian Penal Code and Section 47(A) of the Excise Act.

4. The learned counsel for the petitioner submits that the petitioner took settlement of Group No. 57 constituting Composite Shop Nos. 8, 10 and 11 falling in the district of Nawadah and he was running his wine business under a valid licence. The informant in conspiracy and at the behest of the Syndicate, the Deputy Superintendent of Excise, Nawadah conducted raid within the licensed premises in terms of the provision contained in Section 69 of the Bihar Excise Act read with Rule 64 of the Rules framed under the Bihar Excise Act, 1915. The seizure was made without giving any information and the salesman of the petitioner was arrested and the present case was registered. The licence of the petitioner was cancelled by the Superintendent of Excise on 03.11.2010 against which the petitioner filed Appeal No. 40 of 2010 before Excise Commissioner, Bihar. The Excise Commissioner after hearing, allowed the appeal and revoked the order of cancellation of licence. The Collector was directed to realize the loss caused to the State exchequer by imposing appropriate penalty on the appellant as per Section 68 and Section 42 of the Excise Act and after such realization,

restore the licence of the appellant expeditiously. The learned Collector was further directed to cancel the licence if the appellant is again found to be indulged in such kind of illegal activities. The petitioner as per direction given under Memo No. 15/ Excise, Nawada dated 24.01.2011 deposited an amount of Rs. 1,00,000/- in Government Treasury on 24.11.2011 and on such deposit, the licence of the petitioner was re-issued. It was further submitted that from the allegation, no offence under Section 273 of the Indian Penal Code is made out. The informant had recovered red sachets of country made liquor from the premises of the petitioner, which was to be sold in urban area and for this offence, the petitioner has already deposited an amount of Rs. 1, 00, 000/- as penalty. The learned Magistrate in view of the provision of Section 68(2) of the Excise Act, 1915 ought to have discharged the petitioner. The learned Magistrate has passed the impugned order without applying judicial mind and so, the order is fit to be quashed.

5. The learned APP for the State opposed the submission.

6. On perusal of F.I.R, impugned order and documents on record, I find that the petitioner is a licensee and he was running wine business under a valid licence. In F.I.R., there is no allegation of selling any noxious item. On account of seizure of red colour sachets of wine, which were meant for selling in urban the Superintendent of

Excise cancelled his licence and on appeal, the licence of the petitioner was directed to be restored on imposing appropriate penalty to be assessed by the Collector. As per the direction of the Superintendent Excise, the petitioner has deposited Rs. 1,00,000/- towards the penalty.

7. The provision of Section 68(2) of the Bihar Excise Act, 1915 read as under:-

> *" 68(2): when the payments referred to in sub-Section (1) have been duly made, the accused person, if in custody, shall be discharged, and the property seized (if any) shall be released, and no further proceedings shall be taken against such person or property".*

The learned Magistrate has not considered this provision properly. The petitioner has already deposited an amount of Rs. 1,00,000/- by way of penalty for having in possession of wine in red sachets in village area for the purpose of selling and after deposit of penalty amount, the petitioner deserves to be discharged in view of the provision of Section 68(2) of the Bihar Excise Act, 1915.

8. In view of discussions made above, order dated 16.11.2011 passed by the learned Judicial Magistrate, 1st Class, Nawadah in G.R. No. 1930 of 2010 arising out of Hisua P.S. Case No. 136 of 2010 refusing to discharge the petitioner as well as his criminal

prosecution is hereby quashed and this application is allowed.

(Sanjay Kumar, J)

ajay gupta/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.09.2017
Transmission Date	07.09.2017