

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No. 33674 of 2016

Arising out of P.S. Case No. - 41 Year - 2016 Thana - SARAN GRP CASE District - SARAN

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Radhe Raman Sharma, S/o Bankatesh Sharma, Resident of Village Pahleja, P.S.
Mehandiya, District Arwal

.... Petitioner

Versus

The State of Bihar

.... Opposite Party

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Appearance :

For the Petitioner : Mr. Sandeep Kumar, Advocate

For the Opposite Party : Mr. Sunil Kumar Pandey, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 22-02-2017

The petitioner is an accused, in connection with Sonepur (Hajipur) Rail Police Station Case No. 41 of 2016 (Tr. No. 2792 of 2016) registered under Section 47 of the Bihar Excise Act, 2016, on the statement of Mr. Sanjay Kumar Singh, Police Sub-Inspector, Hajipur Rail Police.

2. According to the First Information Report, foreign liquor was recovered from the possession of the petitioner on 03.06.2016 near the railway inquiry counter.

3. Submission of the petitioner is that the petitioner is a military man and he had brought the aforesaid liquor supplied by the department without any knowledge, that possession of the same is offence in the State of Bihar. Moreover, there was no statutory provision stipulating possession of liquor as an offence on the date of recovery.

4. Learned counsel for the petitioner has relied on the case of



Ram Sumir Sharma Vs. The State of Bihar & Ors. (not reported) vide order dated 26.05.2016 passed in Cr.W.J.C. No. 533 of 2016. In Ram Sumir Sharma aforesaid vide Annexure-3, this Court has observed as follows:-

“A minute reading of the provisions of Section 19(4) makes it clear that by way of the said notification, issued in exercise of its power under Sub-section (4) of Section 19, the State Government has not prohibited possession of liquor by anyone and unless such a notification is published, possession of foreign liquor would not become an offence punishable under the Act.

In other words, having regard to the notification, published on 05.04.2016, it is not possible to hold, albeit tentatively, that mere possession of foreign liquor can be treated as offence under the Act.”

5. Learned counsel for the opposite party does not dispute the factual position as well as the legal position of this case.

6. In the circumstances, the impugned order as well as the criminal proceeding against the petitioner is not sustainable in law. Hence, the same is hereby quashed and this application stands allowed.

(Birendra Kumar, J)

Kundan

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CAV DATE	
Uploading Date	
Transmission Date	

