

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.13712 of 2017

Arising Out of PS.Case No. -202 Year- 2016 Thana -PATNA GRP CASE District- PATNA

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Shailesh Kumar Son of Suresh Prasad, Resident of Village-Mohiuddinpur,
Police Station Fatuha Distt.Patna.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Rabindra Prasad Singh

For the Opposite Party/s : Mr. J.N. Thakur, APP

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 08-04-2017 Heard learned counsel for the petitioner and learned
APP for the State.

The present application has been filed for quashing of order dated 28.9.2016 passed by the learned Railway Judicial Magistrate, Patna in G.R.P. Case No. 202 of 2016, whereby and whereunder the process has been directed to be issued after cognizance being taken under section 47(a) of Bihar Excise (Amendment) Act, 2016 (hereinafter called 'Amended Excise Act').

The prosecution case is that Havildar Mithilesh Kumar Yadav, Rail P.S., Patna Junction, submitted a written report to the Incharge, Rail Police station, Patna Junction on 1.8.2016 stating therein that from the possession of the petitioner



at Patna Railway Platform, three bottles of aristocrat whisky and three bottles of Rum were recovered. On enquiry, he disclosed that he brought the liquor from Punjab. Consequently, Patna Rail P.S. Case No. 202 of 2016 under section 273 IPC and section 47(a) of Amended Excise Act on 1.8.2016.

On conclusion of investigation, the final form was submitted under section 273 of IPC and section 47(a) of Amended Excise Act. Consequently, the learned Railway Magistrate, Patna vide order dated 28.9.2016 passed in Patna G.R.P.S. Case No. 202 of 2016, finding prima facie case under section 273 IPC and section 47(a) of Amended Excise Act, directed for issuance of process against the petitioner.

It is submitted by learned counsel for the petitioner that the petitioner being BSF personnel, was carrying liquor and was not aware about the amended provisions of Amended Excise Act.

It is submitted by the learned APP that the petitioner is named in the FIR and the accusation suggests prima facie case. More over, on conclusion of investigation, the petitioner has been chargesheeted and the learned Magistrate, after going through the case diary and the charge sheet, found prima facie case, hence, directed for issuance of process against the petitioner.



Hence the impugned order does not need any interference.

So far as the contentions of the petitioner that he was not aware of the Amended Excise Act is concerned, the ignorance of law cannot be an excuse.

Considering the rival submission of the parties, in view of this court, at the stage exercising jurisdiction under Section 190(1)(b) Cr.P.C., the Magistrate has only to see the prima facie case. The only added advantage at this stage to the Magistrate is that he has occasion to go through the police report submitted under section 173 (2) Cr.P.C. which contains the materials collected during investigation. This is not the stage when the Magistrate is supposed to consider the defence version as has been held in the case of State of Orissa Vs. Devendra Nath Padhi (2005) 1 Supreme Court Cases 568. Paragraph 23 reads as follows:

“23. As a result of aforesaid discussion, in our view, clearly the law is that at the time of framing charge or taking cognizance the accused has no right to produce any material. Satish Mehra's case holding that the trial court has powers to consider even materials which accused may produce at the stage of Section 227 of the Code has not been correctly decided.”



More over, the impugned order was passed on 28.9.2016 but there is nothing on record to suggest the present stage of the case.

Hence, at this stage, this Court is not inclined to interfere. The present quashing application is disposed of with liberty to the petitioner to raise all the contentions at the appropriate stage of proceeding.

(Dinesh Kumar Singh, J)

Anil/-

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