**IN THE HIGH COURT OF JUDICATURE AT PATNA**
**Criminal Miscellaneous No.28544 of 2016**

Arising Out of PS. Case No.-108 Year-2016 Thana- GOVERNMENT OFFICIAL COMP. District- Nalanda

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Prashant Prakash son of Sri Om Prakash Mehta, Resident of Village Paharpur, P.S. Bihar, District Nalanda

... ... Petitioner/s

Versus

The State of Bihar

... ... Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr. Pravin Kumar

For the Opposite Party/s : Mr. Sri Sanjay Kumar Tiwary 1

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**CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA**

**ORAL JUDGMENT**

**Date : 24-08-2018**

This petition has been filed under Section 482 Cr. P.C. for quashing the order dated 16.5.2016 passed by J.M. 1st Class, Nalanda at Biharsharif in case no 108 C3 Excise Act/16/Trial no. 2023/16 by which learned Magistrate has taken cognizance against the petitioner for the offence under Section 47(A) of the Excise Act.

Learned counsel for the petitioner has submitted that he is owner of the Mirchi Restaurant –cum-Bar at Kargil Chowk, Biharsharif.He was holding a valid licence for restaurant-cum-Bar for the financial period up to 2016-17. The licence was duly renewed by the order of the District Magistrate Nalanda by order dated 2.4.16. The licence of Restaurant-cum-Bar of the petitioner has been annexed as Annexure 3 and 3/1. The raid was conducted on 5.4.2016 and several bottles of foreign Liquor ( Indian made) as shown in the seizure list were recovered from the Restaurant –cum-Bar of the petitioner, in spite of total ban having been imposed in the State of Bihar on wholesale or retail trade and consumption of foreign liquor by any licence holder or any person in the whole of the State of Bihar with immediate effect.

Learned counsel for the petitioner has submitted that aforesaid Bihar Excise Amendment Act, 2016 was notified on 5.4.2016 in the Bihar Gazette (Extraordinary) no. 274. The petitioner was not even informed on 5.4.2016 about the gazette notification of the aforesaid Bihar Excise Amendment Act, 2016. Similarly, there was no any intimation to the petitioner that his licence for Restaurant –cum-Bar was cancelled after the amendment of the aforesaid Act. The petitioner being the bonafide owner of the Restaurant –cum-Bar having valid licence was keeping those foreign liquor ( Indian made) in his Restaurant –cum-Bar. There is no any allegation in the entire prosecution report that anybody was found consuming the liquor inside the Restaurant –cum-Bar when the raid was conducted. There is no ban in Bihar Excise (Amendment Act) 2016, with regard to storage of Foreign liquor.

Learned counsel for the State, on the other hand, submits that after gazette notification of the Bihar Excise Amendment Act, 2016 on 5.4.2016, the ban was imposed on wholesale or retail trade and consumption of foreign liquor by any licence holder or any person in the whole of the State of Bihar with immediate effect .

The point for consideration by this Court is whether the petitioner who was having valid licence for Restaurant –cum-Bar on the date of raid i.e. 5.4.2016, has committed any illegal act making himself liable for the offence under Section 47A of the Excise Act, only on the ground that total ban has been imposed on wholesale or retail trade and consumption of foreign liquor by any licence holder or any person in the whole of the State of Bihar with immediate effect on 5.4.2016 after gazette notification of Bihar Excise (Amendment) Act, 2016 on 5.4.2016.

It is admitted position from the prosecution report as well as seizure list that raid in the Restaurant –cum-Bar of the petitioner was conducted on 5.4.16. The licence of the petitioner was renewed by the order of District Magistrate, Nalanda on 2.4.2016 vide Annexure 3 and 3/1 and the same was valid for the financial period between 2016-17.

In such circumstances, the petitioner after renewal of his licence was keeping foreign liquor in the Restaurant –cum-Bar for trade and consumption. The Bihar Excise Amendment Act, 2016 was notified on 5.4.16. But no intimation was given to the petitioner that his licence for Restaurant –cum-Bar has been cancelled after the aforesaid gazette notification of the Bihar Excise Amendment Act, 2016.

There was no ban on the possession of the foreign liquor by any licence holder under Bihar Excise Amendment Act, 2016. The ban was imposed on wholesale or retail trade and consumption of foreign liquor by any licence holder or any person in the whole of the State of Bihar with immediate effect .

In the instant case, there is no any allegation that petitioner was found doing trade or consumption in the Restaurant –cum-Bar at the time of raid. So far as possession of those liquors was concerned, it was bonafide as the petitioner was having valid licence for the Restaurant –cum-Bar in-question .

In such circumstances, this Court is of the view that initiation of the prosecution against this petitioner for the offence under Section 47A of the Excise Act was not in accordance with law. Therefore, the impugned order dated 16.5.2016 passed by J.M 1st Class, Nalanda at Biharsharif in Case no. 108 C3 Excise Act/16/Trial no. 2023/16 along with entire criminal prosecution is hereby set aside.

This Cr. Misc. petition is, accordingly, allowed.

**(Sanjay Priya, J)**

shyambihari/-

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