IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.3425 of 2018

Arising Out of PS. Case No.-1191 Year-2017 Thana- SAHARSA District- Saharsa

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Md. Nazrul S/o Md. Kabir @ Md. Kabir Rain, R/o Vill.- Rupnagar, Ward No. 40, P.S.- Saharsa, District- Saharsa.

... ... Appellant/s

Versus

The State of Bihar

... ... Respondent/s

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Appearance :

For the Appellant/s : Mr. Neeraj Kumar, Advocate
For the Respondent/s : Mr. Sujit Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date : 10-12-2018

Heard Mr. Neeraj Kumar, learned counsel for the appellant and Mr. Sujit Kumar Singh, learned Additional Public Prosecutor for the State.

2. This appeal is directed against the judgment of convection and order of sentence dated 24.07.2018 passed by the learned Additional Sessions Judge-II-cum-Special Judge, Excise, Saharasa in Excise Case No.537 of 2017 arising out of Sadar P.S. Case No.1191 of 2017 whereby the appellant has been held guilty of the charge under Section 37(b) of the Bihar Prohibition and Excise Act, 2016 (for short 'Excise Act') and sentenced to undergo rigorous imprisonment for six years and fine of Rs.6,00,000/-.

3. The prosecution case is based on the written report dated 11.11.2017 submitted by one Arbind Kumar Mishra, an Assistant Sub Inspector of Police. He had submitted his report to

the Officer-in-charge of the Sadar Police Station, Saharsa on the basis of which, Saharsa P.S. Case No.1191 of 2017 was registered under Section 37(b) of the Excise Act. In his written report, he has alleged that on 11.11.2017 while he and other police personnel were on patrolling duty and when they reached at Panchwati Chauk, they saw that two persons were caught hold of by the local people on the charge that they had snatched away a mobile phone from one Nandan Raj. They were handed over to the police, who disclosed there name as Md. Irfan and Md. Nazrul. Md. Nazrul appeared to be in a deep drunken condition. He was taken to the office of the Superintendent of Police and was put to breath analysis test. The report generated from breath analyzer machine affirmed that he had consumed alcohol.

4. The police conducted investigation and submitted chargesheet agianst the appellant under Section 37(b) of the Excise Act whereafter the learned Special Judge took cognizance of the offence and framed charge under Section 37(b) of the Excise Act against the appellant and put him on trial.

5. In course of trial, altogether five witnesses were examined on behalf of the prosecution. They all supported the case of the prosecution. The defence did not put any question to the

witnesses examined in course of trial. All the witnesses supported the prosecution case.

6. After the evidence on behalf of the prosecution was closed, statement of the appellant was recorded under Section 313 of the Code of Criminal Procedure in which he pleaded innocence. However, no evidence was adduced on behalf of the defence.

7. After hearing the parties, the trial court held the appellant guilty for the charge under Section 37(b) of the Excise Act and sentenced him in the manner as stated hereinabove.

8. Learned counsel for the appellant submitted that he would not be assailing the finding of guilt recorded by the trial court. He would confine his argument on the point of sentence only.

9. He contended that vide Bihar Act 8 of 2018, which came in effect on 30th July, 2018, section 37 of the Excise Act has been amended and substituted whereby in case of an offence falling under clause (a) and (b) of Section 37, for the first offence, the same shall be punishable only with fine, which shall not be less than 50,000/- rupees or in lieu thereof sentence for a period of three months imprisonment.

10. He urged that amended provision has been given retrospective effect. In that view of the matter, the trial court erred

in sentencing the appellant to imprisonment for six years and fine of Rs. 6 lacs.

11. Learned counsel for the State does not oppose the aforesaid contention of the learned counsel for the appellant. He fairly submitted that since the amended provision has been made applicable to all pending cases, the same would also apply to the case of the appellant as appeal is continuation of trial.

12. I have heard learned counsel for the parties and carefully perused the record.

13. Section 37 of the Excise Act prior to its amendment reads as under:-

> **"37. Penalty for consumption of liquor.-** Whoever, in contravention of this Act or the rules, notification or order made there under-
> (a) consumes liquor or intoxicant in any place; or
> (b) is found drunk or in a state of drunkenness at any place; or
> (c) drinks and creates nuisance or violence at any place including in his own house or premises; or
> (d) permits or facilitates drunkenness or allows assembly of drunken elements in his own house or premises;
> shall be punishable,

> (1) in case of an offence falling under clause (a) and (b), with a term which shall not be less than five years but which may extend to seven years and with fine, which shall not be less than one lakh rupees which may extend to ten lakh rupees.
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> (2) in case of an offence falling under clause (c) and (d), with a term which shall not be less than ten years but which may extend to imprisonment for life and with fine, which shall not be less than one lakh rupees which may extend to ten lakh rupees."

14. By way of Bihar Prohibition and Excise (Amendment) Act, 2018 (Bihar Act 8 of 2018), the legislature of the State has made certain amendments under the various provisions of the Excise Act. It is mentioned therein that the amendments shall come into force at once and the amendment has been made applicable to all the pending cases.

15. By the said Amendment Act, Section 37 of the Excise Act has been substituted by the following:-

> "**37. Penalty for consumption of liquor**.- Whoever, in contravention of this Act or the rules, notification or order made thereunder-
>
> (a) consumes liquor or intoxicant in any place; or
>
> (b) is found drunk in a state of drunkenness at any place; or

> (c) drinks and creates nuisance or violence at any place including in his own house or premises; or
>
> (d) permits or facilitates drunkenness or allows assembly of drunken elements in his own house or premises;
>
> shall be punishable;
>
> (1) in case of an offence falling under clause (a) and (b), for the first offence only with fine which shall not be less than Fifty thousand rupees or in lieu thereof sentence for a period of three months imprisonment but for subsequent offence falling under clause (a) and (b), shall be punishable with a term which shall not be less than one year but may extend to five years and with fine, which may extend to one lakh rupees.
>
> (2) In case of an offence falling under clause (c) and (d), with a term which shall not be less than five years but which may extend to ten years and with fine, which shall not be less than one lakh rupees which may extend to five lakh rupees."

16. In the present case, the charge against the appellant is that he had consumed liquor and was found in a state of drunkenness on the date of occurrence. The charge against the appellant was framed under Section 37(b) of the Excise Act and he has been held guilty of the said charge. Since the amended provisions have been made applicable to all the pending cases and

the appeal is continuation of trial, the amended provisions under Section 37(b) would be applicable to the case of the appellant.

17. In that view of the matter, while upholding the conviction of the appellant, the sentence awarded by the learned Additional Sessions Judge-II-cum-Special Judge, Excise, Saharsa in Special Case No.537 of 2017 arising out of Sadar P.S. Case No.1191 of 2017 for the offence under Section 37(b) of the Excise Act, is reduced to fine of Rs.50,000/- or in lieu thereof sentence for a period of three months.

18. In case the appellant has already served three months imprisonment, he shall be released from custody forthwith, if not wanted in any other case.

19. The appeal is dismissed with the aforesaid modification in sentence.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
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