

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.46873 of 2014

Arising Out of PS. Case No.-252 Year-2013 Thana- GARAUL District- Vaishali

Chintu Kumar Singh Son of Sri Jay Prakash Singh Resident of Mohalla -
Chiriya Bazar Sonpur, P.S. Sonpur, District - Saran (Chapra)

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Sanjay Kumar Griyaghey, Adv
For the Opposite Party/s : Mr. D.P. TIWARY (APP)

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
Date : 07-02-2018

Heard learned counsel for the parties.

This petition under Section 482 of the Cr.P.C has been filed for quashing the order dated 04.10.2013 passed by learned Chief Judicial Magistrate, Hazipur in Goroul P.S. Case No. 252 of 2013 (G.R.No. 3159 of 2013), by which cognizance has been taken under section 47(A) of the Excise Act, against the petitioner.

Briefly stated, the facts of the case is that B.N. Ram Sub-Inspector of Goroul Police Station gave a written information that he alongwith other police officials were on patrolling duty and at about 10:00 pm on 23.07.2013, he saw a Maruti-800 car coming from Hazipur and the same



was stopped, searched and 1600 pouches of country made liquor was seized and the petitioner was asked to produce the papers regarding the illicit liquor and the petitioner could not produce the ownership papers of said country made liquor and the same was in illegal possession of the petitioner, which gave rise to Goroul P.S. Case No. 252 of 2013 registered for the offence punishable under Section-47(A) of the Excise Act.

After investigation, police submitted chargesheet dated 20.09.2013 for the offence punishable under Section 47A of the Excise Act.

It has been contended on behalf of the petitioner that under the provisions of Excise Act only Excise Officers have been given power of search, seizure and to investigate and no police officer below the rank of Sub Inspector of Police has been given power of search, seizure and to investigate, as such the whole proceeding initiated against the petitioner is not maintainable and fit to be quashed. It has been further submitted that on the basis of chargesheet, the learned Magistrate took cognizance against the petitioner by order dated 04.10.2013 and issued summons



for his appearance. The petitioner filed a petition for discharge on 30.04.2014, on the ground of initiation of whole proceeding which is bad in law and as such his petition of discharge may be allowed, however, the same was rejected by the impugned order.

Learned counsel for the petitioner has relied upon a judgment and order of this court in the case of **Kamla Devi vs the State of Bihar** reported in **1994(2) East Cr.C 358 (Patna)** on similar issue, in which cognizance has been taken upon the chargesheet submitted by the Sub Inspector of Police, who is not an Excise Officer as required under Section 87 of the Excise Act, was quashed. Similarly, in Criminal Miscellaneous No. 39596 of 2012 decided on 17.09.2013, the prosecution was quashed being in contravention of Section 47A and 87 of the Excise Act.

After hearing the parties and going through the materials on record, this Court finds that the case of the petitioner is covered by these judgments and accordingly the order taking cognizance dated 04.10.2013 under Section 47A of the Excise Act as well as rejection of his discharge petition dated 31.07.2014, are quashed.



The petition stands allowed.

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	12.02.2018
Transmission Date	N.A.

