IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.23009 of 2017
Arising Out of PS.Case No. -316 Year- 2016 Thana -GOVERNMENT OFFICIAL COMP. District- NAWADA
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1. Anit Khandelwal, son of Ranjeet Khandelwal, resident of Barasanda,
2. Arihant Jain, son of Mahesh Jai, resident of Barabh Sima Road
3. Satvinder Singh @ Satvinder Singh Saluja, son of Amarjeet Singh @ Amarjeet Singh Saluja, resident of Bhandaridih
4. Sirshendu Sen Gupta, son of Late Varun Kumar Sen Gupta, resident of Railway Quarter Giridih, All P.S. Case Giridih, District- Giridih.

.... Petitioners

Versus

The State of Bihar through Secretary of Helth Department, Bihar, Patna.

.... Opposite Party

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Appearance :

For the Petitioner/s : Mr. Mritunjay Kumar, Advocate
For the State : Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date: 16-02-2018

Heard Mr. Mritunjay Kumar, learned counsel for the petitioners and Mr. Jharkhandi Upadhyay, learned counsel for the State.

2. This application under Section 482 of the Code of Criminal Procedure has been filed by the petitioners for setting aside the order dated 30^{th} July, 2016 passed by the learned Judicial Magistrate, Nawada in Rajauli Excise Case No.316 of 2016 by which he has taken cognizance of the offence punishable under Section 53(a) of the Bihar Excise (Amendment) Act, 2016.

3. The prosecution case is based on prosecution report submitted by one Sachidanand Bharti, Sub Inspector, Excise.

It is stated in the prosecution report that in routine vehicle checkup organized by the Sub Inspector, Excise, the other staffs who were on duty along with armed forces did not find any incriminating material from the car bearing Registration No.JH-11K/8146 coming from the Jharkhand, but on suspicion, the persons occupying the car were subjected breath analyzer test. No evidence of consumption of alcohol was found in the breath analyzer test conducted on the driver and two others, but it was noticed that the petitioners had consumed alcohol. The petitioners, who were occupying the car, had consumed alcohol. Thereafter, the petitioners were taken to custody and after obtaining the breath analyzer test report, the prosecution report was submitted in the court pursuant to which, vide order dated 30th July, 2016, the learned Chief Judicial Magistrate, Nawada took cognizance of the offence punishable under Section 53(a) of the Bihar Excise (Amendment) Act, 2016.

4. Assailing the aforesaid impugned order dated 30th July, 2016, learned counsel for the petitioners submitted that the order passed by the learned Chief Judicial Magistrate, Nawada taking cognizance of the offence is bad in law in view of Section 85 of the Bihar Prohibition and Excise Act, 2016, which prescribes that the Special Judge would be empowered to take cognizance of the offence. Hence, cognizance taken by the learned Chief Judicial Magistrate is without jurisdiction and is fit to be set aside.

5. The submission made by the learned counsel for the petitioners is totally misconceived. It is true that Section 85(1) of the Bihar Prohibition and Excise Act provides that a Special Judge may take cognizance of offences without the accused being committed to him for trial and, in trying the accused persons, shall follow the procedure prescribed by the Code of Criminal Procedure, 1973 for the trial of warrant cases by the Magistrates. However, the Bihar Prohibition and Excise Act, 2016 came into force with effect from 2nd October, 2016 whereas the cognizance in the present case has admittedly been taken on 30th July, 2016. Prior to 2nd October, 2016, it was the Court of Magistrate, who was competent to take cognizance of the offences punishable under the Excise Act.

6. In that view of the matter, I find no merit in this application. It is dismissed, accordingly.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
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