IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.538 of 2019

Arising Out of PS. Case No.-244 Year-2018 Thana- GOVERNMENT OFFICIAL COMP. District- Gopalganj

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Birendra Prasad Yadav Son of Late Jang Bahadur Chouhary Resident of Village-Bideshi Tola, Ward No. 1, P.S.- Thawe, District- Gopalganj

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Home, Government of Bihar, Patna
2. The Director General of Police, Bihar, Patna.
3. The Deputy Inspector General of Police, Muzaffarpur
4. The Superintendent of Police, Gopalganj
5. The Deputy Superintendent of Police, Sadar, District- Gopalganj
6. The Inspector, Excise, Sadar Area, District- Gopalganj

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Upendra Yadav, Advocate
For the Respondent/s	:	Mr.Vikash Kumar, SC-11

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date : 27-03-2019

The defects, as pointed out by the registry, are ignored.

2. This writ petition under Article 226 of the Constitution of India has been filed by the petitioner for quashing the entire prosecution in connection with Excise Case No. 244 of 2018 in which cognizance of the offence punishable under Section 37(b) of the Bihar Prohibition of Liquor and Excise Act, 2016 (for short 'Excise Act, 2016') has been taken by the learned 2nd Additional Sessions Judge-cum-Special Judge, Excise, Gopalganj.

3. Learned counsel appearing for the petitioner

submitted that from perusal of the prosecution report, no offence is made out. The complaint has been instituted on the basis of a prosecution report submitted by the Inspector Excise, Gopalganj with oblique motive. The petitioner being a Chaukidar, is a public servant and has been implicated in the most high handedness manner in a false and concocted case on the charge of consuming liquor.

4. Per contra, learned counsel appearing for the State submitted that from perusal of the prosecution report submitted by the Inspector Excise, it would be manifest that the petitioner was found in a state of drunkenness. He was subjected to breath analyzer test, which also confirmed that he was drunken at the relevant time. Section 37(b) of the Excise Act, 2016 provides that whoever in contravention of the Act or the Rules, notification or order made under the Act is found drunk or in a state of drunkenness at any place shall be punishable with a term in case of 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 the subsequent offence 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. He contended that the alleged act on

the part of the petitioner attracts the ingredients of the offence punishable under Section 37(b) of the Excise Act, 2016.

5. I have heard learned counsel for the parties.

6. I find substance in the submissions of learned counsel for the State. The prosecution report discloses that the petitioner was found in a state of drunkenness. The said act would clearly attract ingredients of the offence punishable under Section 37(b) of the Excise Act, 2016. In that view of the matter, no illegality can be found in the action of the court if it has proceeded with the prosecution report submitted by the complainant against the petitioner. There is nothing on record to suggest that the prosecution report was filed with ulterior motive or that the petitioner has been implicated falsely. The defence of the petitioner on fact cannot be appreciated by the court at this stage for the purpose of quashing of the entire criminal prosecution.

7. In that view of the matter, I find no substance in the writ petition. It is dismissed, accordingly.

(Ashwani Kumar Singh, J)

Md. S/SKSuman.

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.03.2019
Transmission Date	30.03.2019