IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.529 of 2019

Arising Out of PS. Case No.-243 Year-2018 Thana- GOVERNMENT OFFICIAL COMP. District- Gopalganj

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Ramesh Kumar Paswan Son of Phulchand Paswan R/o Village- Lachhwar, P.S.- Thawe, Distt.- 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, Dist- Gopalganj
6. The Inspector, Excise, Sadar Area, District- Goplaganj

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Upendra Yadav, Advocate
For the Respondent/s : Mr.Vivek Prasad, GP-7

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date : 26-03-2019

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

2. Heard learned counsel for the petitioner and learned counsel for the State.

3. This application under Article 226 of the Constitution of India has been filed by the petitioner for setting aside the entire criminal prosecution against the petitioner in connection with Excise Case No. 243 of 2018 instituted for the offence punishable under Section 37(b) of the Bihar Prohibition

of Liquor and Excise Act, 2016 (for short Excise Act, 2016) pending in the court of learned 2nd Additional Sessions Judge-Cum-Special Judge, Excise, Gopalganj.

4. It is submitted by the learned counsel for the petitioner that the allegations made against the petitioner in the first information report(for short 'FIR') is baseless. The petitioner was neither drunk nor in a state of drunkenness on the alleged date and time of occurrence. He was at his house from where the police took him to the police station and illegally forwarded him before the court in connection with the aforesaid case and the court below remanded him to judicial custody.

5. *Per contra*, Learned counsel appearing for the State submitted that there is no merit in the submission made on behalf of the petitioner. On 27.10.2018, the Inspector, Excise, Sadar Area, Gopalganj apprehended the petitioner in a state of drunkenness while he was on patrolling duty. The petitioner was put to breath analyzer test and the test report also confirms that he had consumed alcohol.

6. I have heard learned counsel for the parties.

7. The allegations made in the FIR do attract the ingredients of offences punishable under Section 37(b) of

the Excise Act, 2016.

8. Section 37(b) of the Excise Act, 2016 provides that whoever in contravention of this Act, or the rules, notification or order made thereunder is found drunk or in a state of drunkenness at any place shall be punishable 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 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.

9. Since the allegations made by the informant is that the petitioner was found in a drunken state, no case for quashing of the entire criminal prosecution is made out.

10. The application lacks merit. It is dismissed, accordingly.

(Ashwani Kumar Singh, J)

Md. S/SKSuman.

AFR/NAFR	NAFR
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