

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Writ Jurisdiction Case No.554 of 2019**

Arising Out of PS. Case No.-100 Year-2018 Thana- JADOPUR District- Gopalganj

Shivji Choudhary Son of Late Ramjeet Choudhary Resident of Village -  
Chatur Bagha, Tola Nawada, P.S.- Jadopur, District- Gopalganj

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Deptt. of Home, Govt. 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, Prohibition of Liquor (Excise), Gopalganj. Bihar

... .. Respondent/s

**Appearance :**

For the Petitioner/s : None  
For the Respondent/s : None

**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH**  
**ORAL JUDGMENT**

**Date : 01-04-2019**

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

2. Despite repeated calls, no one appears for the petitioner.

3. Perused the application filed under Articles 226 and 227 of the Constitution of India by the petitioner wherein a prayer has been made for quashing the First Information Report (for short 'FIR') of Jadopur P.S. Case No. 100 of 2018 dated 27.10.2018 registered under Section 37(b) of the Bihar Prohibition of Liquor and Excise Act, 2016 ( for short



'Excise Act').

4. On perusal of the FIR, as contained in Annexure-1 to the application, I find that the same has been instituted on the basis of a written report submitted by one Kulwant Kumar, Excise Inspector (Prohibition), Gopalganj wherein he has stated that on 26.10.2018 in the night pursuant to the direction of the District Magistrate, Gopalganj, the petitioner Shivji Choudhary and Parshuram Giri were put to breathalyzer test in presence of Superintendent of Excise and Dy.S.P (Headquarter), Gopalganj. in which it was found that both of them had consumed alcohol.

5. Section 37(b) of the Excise Act provides that whoever in contravention of the 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 falling under Clause 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 lacs rupees.

6. Section 76 of the Excise Act provides that all



offences under the Act shall be cognizable and non-bailable and provisions of Code of Criminal Procedure, 1973 (Act 2 of 1974) shall apply.

7. Since the Excise Act is an Special Act, which prescribes that all the offences under the Act shall be cognizable and to hold investigation into a cognizable offence is the statutory duty of the police, no illegality can be found either in institution of an FIR on the basis of written report or in investigation of the same.

8. In that view of the matter, I see no merit in this application.

9. It is dismissed, accordingly.

**(Ashwani Kumar Singh, J)**

Md. S/SKSuman.

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