

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.771 of 2019

Arising Out of PS. Case No.-296 Year-2018 Thana- KUCHAIKOTE District- Gopalganj

Binod Giri aged about 40 years (male) Son of Late Ramayan Giri, resident of
Village- Bhohtapur (Belthari), P.S.- Kuchai Kote, District- Gopalganj.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Deptt. Of Excise, 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 S.H.O., Kuchaikote Police Station, District- Gopalganj.

... .. Respondents

Appearance :

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

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 01-05-2019

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

2. This application under Articles 226 and 227 of
the Constitution of India has been filed by the petitioner for
quashing the first information report (for short 'FIR') of
Kuchaikote P. S. Case No. 296 of 2018 dated 08.10.2018
registered under Section 37(b) of the Bihar Prohibition and Excise
Act, 2016.



3. Learned counsel for the petitioner has submitted that the petitioner is innocent and has been falsely implicated by the SHO and the Deputy Superintendent of Police. He has submitted that smell of liquor may come out even on consuming Homeopathic medicine. Merely because, smell of alcohol was coming out from the mouth of the petitioner, it cannot be said that he had consumed alcohol.

4. On the other hand, learned counsel for the State submitted that the defence of the petitioner cannot be made a ground for quashing the FIR if the allegations made in the FIR do attract the ingredients of the offence alleged. He contended that not only smell was coming out from the mouth of the petitioner but certain tests were also done by the doctor whereafter he had formed his opinion that the petitioner had consumed alcohol.

5. I have heard learned counsel for the parties and perused the FIR.

6. Section 37 of Bihar Prohibition and Excise Act, 2016 prescribes penalty for consumption of liquor. It reads as under:-

“37. Penalty for consumption of liquor.—

Whoever, in contravention of this Act or the rules, notification or order made there under -



(a) consumes liquor or intoxicant in any place;
or

(b) is found drunk or in a state of drunkenness at
any place; or

(c) drinks and creates nuisance or violence at
any place including in his own house or
premises; or

(d) permits or facilitates drunkenness or allows
assembly of drunken elements in his own house
or premises;

shall be punishable,

(1) in case of an offence falling under
clause (a) and (b), with a term which shall
not be less than five years but which may
extend to seven years and with fine,
which shall not be less than one lakh
rupees which may extend to ten lakh
rupees.

(2) In case of an offence falling under
clause (c) and (d), with a term which shall
not be less than ten years but which may
extend to imprisonment for life and with
fine, which shall not be less than one lakh
rupees which may extend to ten lakh
rupees.

Explanation (1) – “Consuming
intoxicant” includes consumption of any
medicine or any ingredient of a medicine or
medicinal preparation that may have an
intoxicating effect.

Explanation (2) - “drunkenness” includes
drunkenness due to any medicine or medicinal
preparation.”



7. In the FIR, it has been alleged that the petitioner, a chaukidar, was brought by the Deputy Superintendent of Police to the police station while he was on duty. He was medically examined by the doctor, who certified that he had taken alcohol and smell of alcohol was coming out from his mouth.

8. Since the ingredients of the offence are attracted, no illegality can be found in the action of the police whereby the FIR has been instituted against the petitioner. The defence of the petitioner can be appreciated only in course of trial by the court. The State has rightly pleaded that the defence on fact cannot be made a ground for quashing the FIR.

9. Accordingly, the application, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J)

kanchan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.05.2019
Transmission Date	02.05.2019

