

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.809 of 2019

Arising Out of PS. Case No.-211 Year-2018 Thana- GOVERNMENT OFFICIAL COMP.
District- Gopalganj

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Ghosh Chaudhary, son of Ghamandi Chaudhary, Resident of Village-Kararia
(Doma hata), P.S- Gopalganj, District- Gopalganj.

... .. Petitioner

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, District-Gopalganj.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr. Upendra Yadav, Advocate
For the Respondent/s : Mr. Kumar Manish, SC-5

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 08-05-2019

Defects pointed out by the office are ignored.

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

3. This application under Articles 226 and 227 of the
Constitution of India has been filed by the petitioner for quashing
the entire proceedings of Excise Case No.211 of 2018 in which
cognizance has been taken for the offence punishable under
Section 37 of the Bihar Prohibition of Liquor and Excise Act, 2016



pending in the court of learned 2nd Additional Sessions Judge-cum-Special Judge, Excise, Gopalganj.

4. Learned counsel for the petitioner submitted that the petitioner is innocent and had not consumed liquor on the alleged date of occurrence. He has been maliciously made accused in this case with oblique motive of the informant. As a matter of fact, the petitioner, who is posted as a Chowkidar in Yadavpur Police Station was sitting in the police station after his duty hour on the alleged date of occurrence i.e. on 27.09.2018 at about 10:30 p.m. and in the meantime, the complainant, Md. Tahir Hussain, Sub Inspector, Excise reached there and arrested him alleging that he was drunk.

5. His further contention is that since the petitioner is a patient of several ailments, he was advised to take homeopathic medicine and had taken medicine on that date also prior to his arrest, but the same caused some confusion for which he is being humiliated and harassed by lodging the present case alleging that he had consumed liquor.

6. *Per contra*, learned counsel appearing for the State submitted that the petitioner was arrested on 27.09.2018 by the complainant Sub Inspector, Excise, Gopalganj while he was drunk. He was subjected to breath analyzer test and the test resulted in



positive and corroborated the fact that he had consumed liquor. He contended that the allegations made in the prosecution report would clearly attract the ingredients of the offence punishable under Section 37 of the Bihar Prohibition and Excise Act, 2016. In that view of the matter, no illegality can be found with the prosecution of the petitioner.

7. Heard learned counsel for the parties and carefully perused the allegations made in the complaint.

8. The Bihar Prohibition and Excise Act, 2016 has been enacted to enforce, implement and promote complete prohibition of liquor and intoxicants in the territory of the State of Bihar and for matters connected therewith or incidental thereto.

9. Section 37 of the said Act prescribes punishment for consumption of liquor. It reads as under:-

“37. Penalty for consumption of liquor.-

Whoever, in contravention of the Act or the rules, notification or order made thereunder-

- (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), 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 (a) and (b), 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.

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

10. In the complaint, it has been alleged that the petitioner was apprehended while he was drunk. In the breath analyzer test, the result reflected that he had consumed liquor. The allegation of malafide or the defence taken that he consumed medicine as a result of which test report can not be said to be sacrosanct can not be made a ground for quashing the entire prosecution.

11. Since the ingredients of the offence are attracted, no illegality can be found in launching the prosecution against the petitioner.



12. The defence of the petitioner can be appreciated in course of trial by the court at appropriate stage.

13. The application is devoid of any merit, it is dismissed, accordingly.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
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