

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.768 of 2018

Arising Out of PS. Case No.-145 Year-2016 Thana- GOVERNMENT OFFICIAL COMP.
District- Buxar

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MUKUL TIRKEY @ MUKUL TIRKI Son of Late Abraham Tirkey resident
of village - Sosochitti, P.S. Gumla, Distt. Gumla Jharkhand at present SJVN
Transit Camp Sainik Colony, Charitravan, P.S. Dist. Buxar.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	: Mr. Ramakant Sharma, Sr. Adv.
	: Mr. Lakshmi Kant Sharma, Adv.
	: Mr. Santosh Kr. Pandey, Adv.
For the Opposite Party/s	: Mr. Jharkhandi Upadhyay, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
ORAL JUDGMENT

Date : 29-04-2019

Heard learned counsel for the parties.

Petitioner, by means of this application under section 482 of the Code of Criminal Procedure, has invoked the inherent jurisdiction of this Court with prayer to quash the order dated 01.07.2016, passed in Complaint Case No. 145(C) of 2016 by the learned Chief Judicial Magistrate, Buxar, whereby and whereunder cognizance for the offence under Section 47 of the Excise Act has been taken against the petitioner and summons have been directed to be issued.

Facts of the case, in short, is that on the report of Excise Inspector, Buxar, complaint case No. 145(c) of 2016 has been registered alleging that while a routine checkup was



going on, a Scorpio car bearing registration No. BR44P-3555 was searched and one 750 ML. Bottle of IMFL has been recovered from the alleged car and accordingly a seizure list was prepared in presence of the excise officials.

Learned Senior counsel appearing for the petitioner submits that the petitioner is innocent and has not committed any offence. In fact, the alleged recovery has been made from a commercial passenger car below the seat of the driver and the petitioner was a passenger only. He has nothing to do with the alleged recovery. Moreover, the alleged car from which the recovery has been made, has been released in favour of the owner on 21.05.2016 after proper verification of the documents, which is evident from Annexure-2. The petitioner happens to be A.G.M. in thermal Power Project, Buxar and he has hired the alleged car which is a commercial vehicle, this fact is evident from the Annexure-3. Moreover, the Chief Judicial Magistrate, Buxar while granting bail to the petitioner vide order dated 21.05.2016 has recorded the reasoning that although the recovery was made below the driver seat of the car but the driver of the alleged vehicle has not been made accused which appears to be unnatural and even though the learned Magistrate while taking cognizance has not appreciated the material fact and differing with his earlier



opinion has taken cognizance under Section 47 of the Excise Act against the petitioner in mechanical manner. On basis of the aforesaid submissions, learned senior counsel submits that the learned Magistrate has materially erred in taking cognizance against the petitioner and as such, the same is fit to be quashed.

Considering the facts and circumstances of the case and the materials available on record, this Court is of the opinion that the learned Magistrate has materially erred in passing the order taking cognizance dated 01.07.2017 passed in Complaint Case No. 145(c) of 2016 under Section 47 of the Excise Act against the petitioner and the same is fit to be quashed and is accordingly, quashed.

The application, accordingly, stands allowed.

(Arvind Srivastava, J)

Brajesh/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

