

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.4058 of 2018

Arising Out of PS. Case No.-423 Year-2017 Thana- DIGHA District- Patna

1. Rajib Dey @ Rajeev De and Anr Son of Ranjeet Day Resident of 140,Nilganj Road,Kolkata and presently residing at Gokul Aardhna Plaza Flat No.102,Kankarbagh,P.S. Kankarbagh,Distt.-Patna
2. Bishal Kumar Dubeyt Son of Kanoj Dubey Resident of Village P.O.-Gobrvera,P.S. Loriya,Distt.-West Champaran and presently residing at 218/B, Nehru Nagar, P.S. Patliputra,Distt.-Patna

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Tuhin Shankar, Adv.

Mr. Gopal Kumar, Adv.

For the Respondent/s : Mr.Sri Shyed Ashfaque Ahmad, APP

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

6 04-11-2019 Heard learned counsel for the appellants as well as
learned APP.

Order of cognizance dated 30.03.2018 passed by
Special Judge, Excise, Patna in connection with Special Case
No. 8217/2017 arising out of Digha PS Case No. 423/2017 is
the subject of challenge.

At an earlier occasion, Cr. Misc. No. 26522/2018
(Annexure-1) was filed challenging the same which has been
disposed of holding as non maintainable vide order dated
31.08.2018 in pursuance of Section 89 of the Act whereunder
any order passed by the Special Judge has been made
appealable.

Considering the nature of the allegation, it looks



inappropriate to indulge into the legal jugglery whether by an application of Section 89, the power of the High Court under Section 482 CrPC would be treated to be vanished.

From perusal of the FIR, it is apparent that on account of recovery of ten empty bottles, allegedly that of Royal Stag Wine having not been explained at the end of appellants, gave a ground to the informant, the police official to infer that the aforesaid bottles were being carried out in order to facilitate its refilling, whereupon, institution of case has been done followed with investigation, submission of charge-sheet and as is evident from the order impugned in mechanical manner, the learned lower court had proceeded.

From perusal of the Excise Act, it is evident that mere possession of empty wine bottles has not been made punishable and consequent thereupon, the prosecution would not lie.

That being so, the order impugned is set aside. Appeal is allowed.

(Aditya Kumar Trivedi, J)

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