

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1575 of 2019

Arising Out of PS. Case No.-357 Year-2018 Thana- DARIYAPUR District- Saran

BALRAJ GOEL Son of Sri Som Prakash Goel R/O - House no.-109, Sector -21A, P.S.- Old Faridabad, District- Faridabad Haryana, Presently working as Managing Director, REVA Industries Limited, Plot no.-28, Sector no.-25, Faridabad, 121004, Haryana

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR THROUGH DIRECTOR GENERAL OF POLICE, BIHAR, PATNA
2. The District Magistrate, Saran Bihar
3. The Superintendent of Police, Saran
4. The Principal Secretary, Excise, D.P.T. Bihar
5. Anuj Kumar Singh S/O - Not Known The S.H.O., Police Station- Dariyapur, Sonapur, District- Saran

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Manoj Kumar Manoj
For the Respondent/s : Mr.Vivek Prasad

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

19-11-2019 Heard learned counsel for the petitioner and learned counsel for the respondents.

2. The present writ petition has been filed for the following relief as formulated by the petitioner--

“For quashing of the F.I.R. bearing Dariyapur P.S.Case No. 357 of 2018 dt.- 3.11.2018 (Annexure-1) lodged by Respondent No-4 under Section-30/30(a),38 and 41 Bihar Excise Act 2016 against petitioner as well as other named accused persons and for further direction to set aside Order dt.-



18.09.2019 including the process (Annexure-3 and 3/1) which has wrongly and illegally issued against petitioner in the format of Section-83 Cr. P.C. in place of Format of Section-82 Cr. P.C. issued by Addl. District Judge XI Excise-Cum-Special Judge, Saran at Chapra causing serious prejudice against the petitioner.”

3. Learned counsel for the petitioner submits that the petitioner is not named in the FIR which has been instituted against other accused persons. During investigation, Reva Industries Limited was found to be the owner of D.C.M. Truck bearing Registration No. HR29V0736 and the petitioner has been implicated as he is the Managing Director of the said Reva Industries Limited. It is submitted that the petitioner had sold the said D.C.M. truck to one Gopal Kaushal as is evident from the purchaser affidavit dated 28th February, 2017 (page 20).

4. Learned counsel for the petitioner does not press his prayer for setting aside the order dated 18.09.2019 directing issuance of process under Section 82 Cr. P.C. (Annexure-3), but confines himself to challenging the format of the process pursuant thereto (Annexure-3/1). It is stated that the format applicable to process under Section 83 Cr. P.C. has been illegally issued which is quite distinct from the format relevant



to process under Section 82 Cr. P.C.

5. As regards the prayer for quashing the FIR, it is not in dispute that recovery of considerable quantity of liquor was made from the D.C.M. truck owned by Reva Industries Limited for which the petitioner is the Managing Director. The claim of the petitioner that he had sold the said truck is based on the affidavit of the purchaser of the truck which however is in nature of defence of the petitioner which cannot be considered at this stage. This Court is therefore not inclined to quash the FIR which *prima facie* discloses commission of non-bailable offence. As regards the format of the process issued pursuant to the order dated 18.09.2019, a bare perusal of the process issued on the same date (Annexure-3/1) clearly shows that the same has been issued in the format prescribed for the purposes of Section 83 Cr. P.C as is evident from the heading thereof which reads “*order of attachment to compel the appearance of persons accused*” and refers to Section 83 of the Code of Criminal Procedure. It further appears from the order sheet (Annexure-3) that process under Section 82 Cr. P.C. has been issued subsequently on 20.09.2019.

6. In the above circumstances, the process dated 18.09.2019 issued in the format relevant to process under



Section 83 Cr. P.C. (Annexure-3/1) is hereby quashed. The concerned authority shall be at liberty to approach the learned court below for issuance of process under Section 82 Cr. P.C in the proper format, if not already issued.

7. The writ petition stands disposed of with the aforesaid observation.

(Vikash Jain, J)

HR/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	21. 11.2019
Transmission Date	21. 11.2019

