

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.806 of 2018

In

Criminal Appeal (SJ) No.755 of 2018

Arising Out of PS. Case No.-30 Year-2017 Thana- KHANPURA District- Samastipur

Gopal Thakur S/o Manoj Thakur, resident of Ratanpur, P.S. Kamtaul, District-
Darbhanga. Petitioner/s

Versus

The State Of Bihar. Respondent/s

Appearance :

For the Petitioner/s : Mr. Krishna Pd. Singh, Sr. Advocate
For the Respondent/s : Mr. Shyed Ashfaque Ahmad

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 13-02-2019

This revision application has been filed for setting aside the order dated 23.09.2017 passed by learned Additional Sessions Judge-2-cum-Special Judge, Excise Act, Samastipur in Khanpur P.S. Case No. 30 of 2017 by which he has taken cognizance of the offence under Sections 272, 273, 420, 467, 468, 471, 120(B) of the Indian Penal Code and Sections 30A, 35A, 38(I,II) and 40(I, II) 47 of Bihar Prohibition and Excise Act, 2016.

Prosecution case is based upon self statement of informant Ajit Kumar on 17.03.2017 in which it has been alleged that while he was on patrolling duty and gave indication to a Bolero Vehicle to stop but he tried to flee away, upon which 4-5 persons were sitting and a truck coming behind the Bolero was intercepted and driver of the truck was apprehended who



disclosed his name as Sukhbir Singh and on search being made huge quantity of foreign liquor was recovered and driver disclosed the name of Bindu and Amit Kumar who were to receive delivery of alleged liquor.

Petitioner is not named in the FIR. His name has surfaced in this case during investigation on the basis of call details of driver co-accused Sukhbir who had conversation on mobile with Md. Nijam and said Md. Nijam had conversation with the petitioner on 24.05.2017 and he has been made accused in this case.

It has been submitted on behalf of the petitioner that no criminal offence is made out against the petitioner as he was not found in possession buying, selling distributing, collecting or transporting the liquor. Petitioner has no concern with the seized liquor. Petitioner has no concern with the alleged vehicle or liquor kept on it.

After investigation police has submitted charge sheet against the accused persons including petitioner and on basis of case diary, charge sheet and materials available on record, the court below has taken cognizance against petitioner by order dated 23.09.2017 as impugned in this petition. The trial court has held that on the basis of material available on record, prima



facie case is made out against the petitioner and issued summons to appear and face the trial.

At the time of taking cognizance of the offence, the trial court on the basis of materials available on record has to form an opinion whether prima facie case is made out against the accused persons or not and at that time defence of accused cannot be taken into consideration by the trial court nor reliability or sufficiency or admissibility of the evidence can be looked into.

After going through the order as impugned in this petition, this Court does not find any illegality, irregularity or error committed by the trial court while taking cognizance against the petitioner as such, the present petition is dismissed. However, it shall be opened to the petitioner to raise all the points as raised in this petition at the time of discharge/framing of charge.

With said observation and liberty, present petition is dismissed.

(S. Kumar, J)

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