

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 37686 of 2020

Arising Out of PS. Case No.-354 Year-2020 Thana- SHERGHATI District- Gaya

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Aniket Singh, aged about 28 years, Male the Owner of Hotel Welcome, Son of Sanjay Singh, Resident of Gola Bazar Sherghati, PS - Sherghati District Gaya.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Shivendra Prasad, Advocate

For the State : Mr. Umesh Lal Verma, APP

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 06-08-2021

The matter has been heard *via* video conferencing.

2. Heard Mr. Shivendra Prasad, learned counsel for the petitioner and Mr. Umesh Lal Verma, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State.

3. The petitioner apprehends arrest in connection with Sherghati PS Case No. 354 of 2020 dated 28.07.2020, instituted under Section 30(a) of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as the 'Act').

4. The allegation against the petitioner is that from Hotel Welcome, which is owned by him, situated at Nai Bazar, Sherghati, 534 cans, each containing 300 ML of fruit beer containing 0.6 to 0.8 % alcohol, has been recovered.

5. Learned counsel for the petitioner submitted that first of all, the entire prosecution case is *mala fide* for the reason that even the chemical examination revealed that percentage of



alcohol by volume varied from 0.6 to 0.8%, which is well under the limit by which any drink can be classified as alcoholic and intoxicant, for which BIS has prescribed a limit of 4%. It was submitted that though the Act does not lay down any percentage, but in the judgment of this Court in Cr. WJC No. 627 of 2017 dated 05.12.2017, the word “alcoholic beverage or potable liquor”, under Section 2(4) of the Act, has been considered and it has been held that the Act prohibits “intoxicant or liquor containing alcohol of any strength and purity as per the definition of ‘alcoholic’ under Section 2(3) of the Act” and simultaneously, it does not prohibit sale etc. of non-alcoholic substances in conformity with the standard set by the BIS, in view of the definition and clarification contained under Sections 2(4) and 2(6) of the Act. Thus, it was submitted that both sections, if read together, would show that in the present case whatever has been recovered would not constitute an offence under the Act. Learned counsel submitted that petitioner does not have any other criminal antecedent.

6. On 16.07.2021, the Court had called upon learned APP to seek instructions on the aforesaid submissions of the petitioner. Today, a communication from the Senior Superintendent of Police, Gaya has been brought on record, in



which it has been stated that as per notification dated 19.03.2018, issued by the Ministry of Health and Family Welfare (Food Safety and Standard Authority of India), alcoholic beverage has been specified to be a liquor or brew containing more than 0.5% ethanol and, thus, the recovery of the fruit beer in which ethyl alcohol content was 0.6% to 0.8% V/V, comes within the purview of the Act. It has further been stated that the recovery of the drink of Kingfisher, Budweiser and Hrineken Company containing ethyl alcohol in the aforesaid percentage clearly would be covered under the Act.

7. Learned counsel for the petitioner submitted that the fruit beer seized had been given to Lallan Yadav by M/s Kumar Construction which was the distributor of fruit beer and Lallan Yadav had occupied the room of the petitioner's hotel from which recovery has been effected, and, thus, the petitioner cannot be held liable for such recovery.

8. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that for the purposes of consideration of the present petition, a *prima facie* offence is required to be seen whether made out under the Act. In the present case, when as per notification dated 19.03.2018, issued by the Ministry of Home and Family Welfare



(Food Safety and Standard Authority of India), alcoholic beverage has been specified as containing more than 0.5 % ethanol and in the present case, the percentage of ethanol being 0.6 to 0.8, *prima facie*, an offence is made out under the Act. The Act further stipulates that the owner of the premises would also be liable for such recovery. The Court would pause here to indicate that though such presumption is rebuttable, but it has to be at the stage of trial where it has to be proved that the accused had no concern with the recovered article which can be done only upon adducing evidence and the stage would be clearly at the time of trial.

9. Thus, the Court finds that *prima facie* an offence having been made out under the Act, the present petition under Section 438 of the Code of Criminal Procedure, 1973 would not be maintainable due to bar of Section 76(2) of the Act.

10. In the aforesaid background, the petition stands dismissed as not maintainable.

11. Interim protection granted to the petitioner under order dated 16.07.2021, stands vacated.

(Ahsanuddin Amanullah, J.)

P. Kumar

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