

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.25183 of 2022

Arising Out of PS. Case No.-304 Year-2021 Thana- BARARI District- Katihar

Balister Prasad Choudhary Son of Mathura Choudhary R/o Behind Airtel
Tower, Lohiya Nagar, Katihar, Bihar - 854105

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Director General of Police, Bihar
3. The Superintendent of Police, Katihar Bihar
4. The Superintendent, Prohibition, Katihar Bihar
5. The Station House Officer, Barari Police Station, Katihar Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Dhananjay Kumar, Advocate
For the State : Dr. Mrityunjaya Kr. Gautam, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

3 17-11-2022 1. Heard learned counsel for the petitioner and learned
APP for the State.

2. This petition is filed for quashing the order dated
19.02.2022 passed by learned Special Judge, Excise Court No.1,
Katihar, whereby and whereunder cognizance has been taken
and petitioner has been summoned to face trial for the offence
under Sections 414 and 34 of the Indian Penal Code read with
Sections 30(C) and 32(A) of the Bihar Prohibition and Excise
(Amendment) Act, 2018 and for quashing the entire proceedings
in the case in connection with Barari P.S. Case No. 304 of 2021
having G.R. Case No. 4883 of 2021, presently pending in the



Court of learned Special Judge, Excise Court No.1, Katihar.

3. The allegation against the petitioner is to involve in manufacturing of illicit liquor, where about 19,400 kg of jaggery, 1,750 kg of raisin like thing and other raw materials were recovered from the shop of the tenant of the petitioner.

4. Learned counsel for the petitioner submitted that the entire case is based on suspicion and it is a case of no evidence. It is submitted that petitioner is the owner of the said premises, where a rent agreement was executed in favour of Raunak Kumar Chaudhary, son of co-accused, namely, Mukesh Choudhary for a period of three years from 06.03.2021 to 05.03.2024 for the purpose of godown and the agreement clearly forbids the use of said property for any illegal activities. It is submitted that petitioner has no control over the rentee except for the conditions imposed through legal agreement. It is further submitted that no intoxicant or liquor was recovered from the house. It is also submitted that seized articles have never been sent for chemical examination or any laboratory analysis report have ever been procured and produced before the Hon'ble Court, so as to justify the action of prosecution.

5. It is appropriate to reproduce Section 56 of the Bihar Prohibition and Excise Act provides for the things, which



are liable for confiscation, Section 56 reads as under:

*“56- Things liable for
confiscation.—Whenever an offence has
been
committed, which is punishable under this
Act.-*

*(a) any intoxicant or liquor unlawfully
imported, transported, manufactured, sold,
stored, possessed, material, utensil,
implement, apparatus, package or covering
and or the other contents, if any, of such
receptacle, package or covering for the
purposes of storing, manufacturing or
labelling such intoxicant or liquor;*

*(b) any animal, vehicle, vessel or
other conveyance used for carrying any
intoxicant or liquor; or*

*(c) any premises or part thereof that
may have been used for storing or
manufacturing any liquor or intoxicant or
for committing any other offence under
this Act;*



shall be liable to be confiscated in a manner prescribed under the provisions of the Act,

(d) The State Government, if deem necessary, may issue necessary directions, guidelines, Regulations and instructions with respect to mode and manner of search, seizure and confiscation."

6. Learned counsel further relied upon the decision of this Court in the case of ***Brihaspati Mukhiya vs. State of Bihar, 2019 (1) 477 (PHC)***. An extract of the judgement reads as under:

"Any thing is liable to be confiscated only when an offence has been committed – Section 56 comes into play only when offence has been committed. Clause (a) , (b), (c) and (d) are going a long way to show that it is only when any material or utensil is found to have been used as a means for commission of the offence under the Excise Act, 2016 such material and utensils are liable to be confiscated. Unless an offence



has been committed which is punishable under Excise Act, 2016 using any premises or part thereof, same cannot be liable for confiscation. Limitations on use of police power cannot be exercised on basis of conjectures and surmises. If Police power is allowed to be used by complying surmises and conjectures and on a mere imagination, it will result in misuse of powers by Police and will make residential house of a village capable of being confiscated de hors provisions of Section 56 of Excise Act, 2016.

7. It was brought to the notice of this Court that an identical issue was raised in the case of ***M/s Smart India Marketing vs. State of Bihar, which was decided in Cr.WJC No. 627 of 2017***, in which a Bench of this Court vide judgement dated 05.11.2017 quashed the subject F.I.R., holding that the Prohibition Act does not prohibit sale etc., of non-alcoholic substances, which is in conformity with the standard set by the BIS, as defined under the Act.

8. The judgement referred to above *inter alia* holds that for attracting the penal provisions of Sections 30(a) and



30(g) of the Bihar Prohibition and Excise Act, 2016, the substance must be an intoxicant or a liquor which could be served as an alcohol or as a substitute of alcohol, which is capable of being used or consumed for getting intoxicated.

9. It is further submitted that in the case of *State of Haryana and Others vs. Bhajan Lal and Others reported in 1992 Supp(1) SCC 335*, a two Judges Bench of the Supreme Court provided an illustrative set of situations, where the High Court could exercise its jurisdiction under Article 226 of the Constitution of India or Section 482 of the Code of Criminal Procedure for quashing the F.I.R.

10. It is further submitted that in a more recent decision of the Supreme Court in *Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra and Others, (2021) SCC Online SC 315 [2021(2) PLJR (SC)229]*, the Supreme Court has reiterated those principles but has cautioned that the investigation ought not to be thwarted and the power of quashing the F.I.R. should be exercised sparingly with circumspection.

11. In view of the submissions, as advanced above, as petitioner is the owner of the said premises, where a rent agreement was executed in favour of Raunak Kumar Chaudhary



for the purpose of godown and the agreement clearly forbids the use of said property for any illegal activities, where petitioner has no control over the rentee except for the conditions imposed through legal agreement and, further, as no intoxicant or liquor was recovered from the said house, this Court is of the opinion that no justice will be served in proceeding with present case.

12. Accordingly, the impugned order dated 19.02.2022 is set aside.

13. Hence, the present quashing petition is allowed.

(Chandra Shekhar Jha, J)

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