

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.565 of 2021

Arising Out of PS. Case No.-283 Year-2017 Thana- RAHUI District- Nalanda

Munna Sao Son of Prabhu Saw Resident of Village - Swarggali, Rahui Bazar,
P.S.- Rahui, Distt.- Nalanda.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant	:	Mr. Vikram Deo Singh, Advocate Mr. Rabindra Prasad Singh, Advocate
For the Respondent	:	Mr. Abhimanyu Sharma, A.P.P.

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE KHATIM REZA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 02-09-2022

By a judgment and an order dated 11.08.2021/18.08.2021 passed by learned Additional District and Sessions Judge, in G.R. No. 816 of 2017, arising out of Nalanda, Rahui P.S. Case No. 283 of 2017, the appellant has been convicted and sentenced as under:

Appellant Name	Sentence			
	Conviction under Section	Imprisonment	Fine (Rs.)	In default of fine
Munna Sao	30(a) of the I.P.C.	Rigorous Imprisonment for 11 years	1,50,000/-	R.I. for 3 months.

2. The said judgment and order of the trial court is under challenge in the present Criminal Appeal preferred under



Section 374(2) of the Code of Criminal Procedure, 1973 (Cr.P.C. for brevity).

3. We have heard Mr. Vikram Deo Singh, learned counsel for the appellant and Mr. Abhimanyu Sharma, learned Additional Public Prosecutor for the State.

4. The prosecution's case as disclosed in the First Information Report (F.I.R., for brevity), based on the self-statement of Sub-Inspector of Police Sunil Kumar Nirjhar (PW-7) on 13.10.2017 is that on receipt of a secret information at 03.20 pm on 13.10.2017 to the effect that some persons were engaged in illicit trade of Indian Made Foreign Liquor (IMFL), a team was constituted and an Assistant Sub-Inspector of police, Ram Dev Mandal (PW-1) was sent in civil dress to the concerned place, feigning to be a customer. The informant and other police officials were, in the meanwhile, watching from a close distance the movements. At 03.30 pm, the appellant came with IMFL (Whiskey) and gave it to PW-1, set up by the police as a customer to trap the offender. The moment the appellant handed over the IMFL to PW-1 i.e. the police personnel feigning to be the customer, P.W.-1 and other policemen apprehended him. Thereafter, the informant and others also reached there and started making inquiries. The appellant upon interrogation disclosed his name. On further enquiry about the illicit liquor, the appellant disclosed that he was coming from his house. Thereafter, the



police personnel went along with the appellant to his house and recovered 160 bottles of Royal Stag Deluxe whiskey in 750 ml. bottles kept in 14 cartons. Further, 72 bottles of 375 ml of Royal Stag Deluxe whiskey in three cartons were also recovered in presence of seizure list witnesses namely Santosh Kumar and Rajsahi Yadav, both residents of the same Rahui Bazar, under Rahui police station, where the raid was conducted. The seizure list was prepared in the presence of the said seizure list witnesses, who willingly put their signatures on the seizure list memo. Based on the aforesaid accusation, the concerned Rahui P.S. Case No. 283 of 2017 came to be registered disclosing commission of offences punishable under Section 30(a) of the Bihar Prohibition and Excise Act, 2016.

5. The police upon completion of investigation submitted charge-sheet. Cognizance was taken based on the said charge-sheet. The Special Court, Excise framed charge on 02.02.2018 as under:-

“That you on or about the 13th dated October 2017 at village-Rahui, P.S. Rahui, Distt.-Nalanda, in contravention of the Provision of Bihar Prohibition and Excise Act, 2016, you had in your possession of 160 bottles Royal Stag Whisky of 750 ml contained in 14 cartoons, 72 bottles Royal Stag Whisky of 375 ml contained in 3 cartoons kept in your house and also a mobile of Samsung Co. for the purpose of sell and thereby committed an



offence under Section punishable 30(a) of the Bihar Prohibition and Excise Act, 2016 and within my cognizance.”

6. As the appellant denied the charge, he was put on trial.

7. At the trial, altogether eight witnesses came to be examined as P.Ws 1 to 8, all of whom were members of the same police party which had conducted the trap and raid of the appellant's house and caused seizure of the illicit IMFL. The seizure list was exhibited as exhibit No. 1. The signatures of the seizure list witnesses were marked as exhibit 1/1 (Santosh Kumar) and exhibit 1/2 (Rajshahi Kumar).

8. After closure of the evidence of the prosecution, the circumstances appearing against the appellant in the evidence of the prosecution witnesses were explained to him and he was given an opportunity to explain the circumstances as stipulated under Section 313 of the Criminal Procedure Code.

9. Upon analysis and scrutiny of the deposition of prosecution witnesses, the exhibits proved at the trial, the trial court found the appellant guilty of the offences punishable under Section 30(a) of the Act and has accordingly sentenced the appellant to undergo rigorous imprisonment for a term of 11 years with a fine of Rs. 1,50,000/- as has been noted at the outset.

10. Mr. Vikram Deo Singh, learned Counsel appearing on behalf of the appellant assailing the impugned judgment and



order of the trial court has submitted that based on evidence adduced at the trial, the prosecution miserably failed to establish the recovery and seizure of the illicit liquor beyond all reasonable doubts, inasmuch as the independent seizure list witnesses were not produced at the trial of their examination. He has further submitted that all of the prosecution witnesses are the police officials, who had conducted the trap and raid leading to the so-called recovery of illicit liquor and, therefore, are highly interested witnesses. He has further, submitted that the evidence of many of the prosecution witnesses is substantially at variance with the prosecution's case, as disclosed in its initial version in the *fardebyan*, which set the criminal case into motion. He has also submitted that there are material contradictions and substantial inconsistencies in the evidence of the prosecution witnesses. He has accordingly submitted that in the light of apparent material contradictions and inconsistencies in the evidence of the prosecution witnesses, the appellant deserves to be acquitted by giving him benefit of doubt. He has argued that the entire prosecution story becomes doubtful in view of the depositions made by the prosecution witnesses.

11. He has also drawn our attention to the provision under Section 74(2) of the Act which requires that all arrests made under Section 74 of the Act must be reported to the collector forthwith. There is no evidence to suggest that the said



requirement was complied with by the police officials by reporting the appellant's arrest to the collector. He has contended that the said statutory requirement is mandatory in nature and non-compliance of such mandatory requirement casts a doubt on the prosecution's case concerning the manner and the circumstances of the appellants arrest. He has also referred to Section 82 of the Act which casts a duty upon every police officer, making any arrest, search or seizure to submit a report to the collector and to the excise officers empowered under Section 73 of the Act within 24 hrs. He submits that while on the one hand, the prosecution has failed to examine the seizure list witnesses at the trial, on the other, it has failed to comply with the statutory requirement under Section 82 of the Act by not reporting to the collector about the seizure of the illicit liquor. He has accordingly submitted that the entire case of the prosecution becomes doubtful, if these circumstances are taken into account in totality.

12. Mr. Abhimanyu Sharma, learned Additional Public Prosecutor representing the State has submitted that examination of seizure list witnesses at the trial is not a mandatory requirement and on the ground of non-examination of seizure list witnesses, the factum of recovery of seizure cannot be doubted, particularly, when the seizure has been proved by all the witnesses. He has further argued that benefit of doubt may not be extended to the appellant on the sole ground that all the prosecution witnesses are



police personnel. If the evidences of the police personnel as prosecution witnesses appear to be truthful and reliable, the Trial Court may record finding of conviction based on their testimony. He has submitted that the finding of conviction recorded by the Trial Court cannot be said to suffering from any legal infirmity requiring this Court's interference in the present proceeding. He has argued that Section 74 (2) of the Act is not mandatory and its non-compliance will not adversely affect finding recorded by the trial court on due analysis and scrutiny of the evidence adduced at the trial. He has relied on the Hindi version of the said provision and has submitted that the English version of the Act does not appear to be correct translation of the Hindi version of sub-Section 2 of Section 74 of the Act. To this submission, Mr. Vikramdeo Singh, learned counsel appearing on behalf of the appellant has submitted that if there is any difference in English version and Hindi version of the statute, the English version shall prevail.

13. Mr. Sharma, learned Additional Public Prosecutor has further submitted that non-compliance of the provision under Section 82 of the Act can neither vitiate the trial nor the finding of conviction as has been recorded by the Trial Court. He has argued that the said provision under Section 82 of the Act requiring reporting of the seizure list and searches is directory in nature for administrative purposes and any breach of requirement under Section 82 of the Act may also not be a basis for this Court to



interfere with the finding of conviction recorded by the Trial Court in its impugned judgment, which is under challenge in the present appeal.

14. We have carefully gone through the impugned judgment of conviction and the order of sentence passed by the Trial Court and we have also perused the evidence of prosecution witnesses and documentary evidence adduced at trial. We have given our anxious consideration to the rival submissions made on behalf of the appellant and the State, as noticed above.

15. We have mentioned at the outset the case of the prosecution as disclosed in the self-statement of the Sub-Inspector of Police, Rahui police station, which is the basis for registration of F.I.R. It is clear from the said self-statement, which is the initial version of the prosecution, that the place where the appellant was arrested is different from the place where the recovery of illicit IMFL was made. It is the prosecution's case, in the F.I.R. that the appellant was apprehended by the police personnel when he (the appellant) was handing over a bottle of IMFL to PW-1, who was set up by the police to feign as a customer. After he was apprehended, he was taken by the police team to his house, as was disclosed by the appellant. According to the F.I.R, the recovery and seizure of illicit liquor was made from the ground floor of the house.



16. On careful perusal of the F.I.R., it can be easily discerned that as per the prosecution's case disclosed therein the place where PW-1 was handed over the bottle, containing liquor was different from the place from where the recovery of more quantity of liquor was made by the police i.e. from the house of the appellant. In the F.I.R., it is specifically mentioned that the appellant disclosed to the police when he was apprehended that he was coming from his house and thereafter, the police party proceeded towards his house. It is reiterated that it was not the case of the prosecution, as disclosed in the F.I.R., that PW-1 had gone to the house of the appellant, where illicit IMFL was handed over to him.

17. PW-1, who is the main witness and who was set up by the police party as a customer, in his evidence, has deposed that he was sent to the house of the appellant and when he went there and demanded liquor, the appellant came with a bottle of whiskey in a hamper. He (PW-1) immediately apprehended him (the appellant) whereafter, the raiding party reached. In cross-examination, he deposed that the appellant was apprehended at the gate of his house and that the appellant had come with a bottle of illicit liquor after he was called by PW-1. It is not the evidence of PW-1 that he had asked the appellant at the said point of time to provide him illicit liquor or had, at any earlier point of time, asked the appellant to supply him the illicit liquor. He also deposed that recovery of



the illicit liquor was made from the ground floor of the house of the appellant.

18. PW-2, in his examination-in-chief deposed that recovery of IMFL in (14+3) cartoons was recovered from the ground floor of the house. However, in his cross-examination, he stated that the recovery of the illicit liquor was made from the second floor of the house, which apparently contradicts his own deposition in examination-in-chief and deposition of PW-1. On the point of the place of arrest of the appellant, PW-2 deposed, in his evidence, that he was arrested in the street (*Rasta*), whereas, PW-1 deposed that he had gone to the house of the appellant, where he had demanded supply of liquor, whereupon the appellant had given him liquor in a bottle. From the evidence of P.W.-3, it also transpires that according to him the appellant had come from his house with a bottle of illicit liquor to be given to PW-1 and when he had given the same to PW-1, he was apprehended by the police party. He disclosed to the police party that illicit liquor was stored in his house. Thereafter, he was taken by the police party to the appellant's house. PW-5 also deposed that the appellant was apprehended when he was handing over the illicit liquor to PW-1, and thereafter, from the place, where he was apprehended, he was taken to his house. From the ground floor of the appellant's house, the illicit liquor in cartons were recovered.



19. Evidence of PW-5, who is also a police personnel and a part of the raiding team, is entirely different. He has deposed that based on secret information, the police party had gone to Swarg Gali, Rahui Bazar. Upon seeing the police party, a person started fleeing away, who was apprehended. Thereafter, he disclosed his name as Munna Sao (the appellant). PW-6 was also a member of the raiding team posted as Assistant Sub-Inspector of Police of the concerned police station. He deposed that the appellant was taken to his house. Apparently, the evidence of PW-6 is materially different from the case of the prosecution, as disclosed in the F.I.R. that the appellant was apprehended from a place which is different from the house of the appellant. PW-7 was the Officer-Incharge of the police station. who had led the raiding team. He, in his deposition, has narrated the case of prosecution, as was disclosed in the F.I.R., to the effect that the appellant was apprehended at a place different from his house. The appellant, according to him, had disclosed to the police party that he had brought the illicit liquor from his house and that more illicit liquor was available in his house. Thereafter, the appellant was taken to his house leading to recovery of illicit liquor in cartons. The Investigating Officer has been examined as PW-8, who was not present at the place of occurrence nor the seizure was prepared in his presence.

20. Upon close scrutiny of the evidence of the prosecution witnesses, all of whom were members of the raiding



party and are police personnel, in our considered opinion, their evidences are materially divergent on more than one point. Firstly, the prosecution witnesses, in their depositions are not consistent on the point of the place where the appellant was apprehended by the police party while handing over a bottle of liquor to PW-1. The Officer-Incharge of the police station (PW-7) has stated in his evidence that after having been arrested by the police party, the appellant disclosed that he had brought the said illicit liquor from his house. Apparently, the place where the appellant was apprehended according to PW-7 was different from the house of the appellant. PW-1, to whom the illicit liquor was handed over, has, on the other hand, deposed that he had gone to the house of the appellant and called the appellant, whereafter, he had handed over to him a bottle of illicit liquor and the appellant was arrested immediately thereafter. Further, PW-1 in this evidence, has deposed that IMFL stored in cartons were recovered from the ground floor of the appellant's house; PW-2 during his cross-examination, has deposed that the recovery of the articles was made from the second floor of the house. Apparently thus, there are inconsistencies in the evidence of the witnesses on the point of the place, where the appellant was found to be handing over the illicit liquor to P.W.-1. Deposition of P.W.-2 that the illicit liquor was recovered from second floor of the house creates further doubt



over the case of the prosecution as disclosed in the F.I.R. and set up at the trial.

21. It is true that merely on the ground of non-examination of seizure list witnesses, seizure itself cannot be doubted, if the seizure list is proved in accordance with law. Further, merely on the ground that all the prosecution witnesses are members of police force and most of them were members of the raiding party, their evidence may not be brushed aside on that ground alone. However, the absence of independent witnesses and seizure list witnesses at the trial becomes significant in the present case where the prosecution's witnesses, all of whom are police personnel, are inconsistent in their evidence and there are material contradictions in their evidences as has been noted above. Place of seizure of IMFL becomes doubtful in the light of evidence of PW-2. It is the case of the prosecution that after the appellant was apprehended, the persons present nearby had gathered at the place of occurrence. No independent witness has however been examined. In view of apparent material, contradictions and inconsistencies in the evidence of the prosecution witnesses, failure on the part of the police official to submit a report to the Collector and to the Excise Officers empowered under Section 73 of the Act within 24 hrs. of arrest, search or seizure assumes significance. On perusal of the lower court records and evidence



on record, it is manifest that there has been no compliance of Section 82 of the Act. Section 82 of the Act reads as under:-

“82. Reports of arrests, seizures and searches. - Every Police Officer upon making any arrest, search or seizure shall submit a report to the Collector and to the excise officers empowered under Section-73 within twenty four hours.”

22. Section 82, in clear terms ordains every police officer making any arrest, search or seizure under the Act to submit a report to the Collector and Excise Officers empowered under Section 73 of the Act, within 24 hrs. Section 73 of the Act reads as under:-

“73. Power to enter, inspect, search and seize. - Any of the following officers namely:

(a) The Excise Commissioner; or

(b) The Collector; or

(c) Any block level officer and above of the District authorized by the Collector; or

(d) Any Excise Officer; or

(e) Any police officer not below the rank of [Assistant Sub-Inspector]; or

(f) Any other officer or agency or force, armed or otherwise, authorized for this purpose by the State Government;

may, without warrant but subject to such restrictions as may be prescribed by the State Government, enter , inspect ,search any place at any time, day or night, and seize any document, sample, equipment, conveyance, animal, commodity, intoxicant, material, raw material or any other item of concern.”

23. Section 73 confers upon the officials mentioned therein, power to enter, inspect, search and seize without warrant but subject to such restrictions as may be prescribed by the State Government.



24. On conjoint reading of Section 82 and Section 73 of the Act, it can be easily discerned that power to enter, inspect, search and seize is vested also in a police officer not below the rank of Assistant Sub-Inspector. Further, Section 74 of the Act confers power to arrest a person without warrant. Section 74 of the Act reads as under:-

“74. Power to arrest or detain without warrant. - (1)
Any of the officers mentioned in Section-73 may arrest or detain, without warrant, any person and/or any vehicle, animal, means of conveyance, at any time of day and night, found committing an offence or attempting to commit an offence punishable under any provision of this Act.
(2) All arrests made under this section must be reported to the Collector forthwith”.

25. On conjoint reading of Section 73 and section 82 of the Act, it is manifest that whereas all the officials, mentioned in Section 73 of the Act, have the power to enter, inspect, search and seize without warrant but, if such power is exercised by a police official [see Section 73 (1) (e)], he is under statutory obligation in terms of Section 82 of the Act to report it to such Excise officials, who are empowered under Section 73(1)(a) and Section 73(a)(b) as well as the Collector [see Section 73(b)].

26. On perusal of the lower court records, it is also seen that there has been no compliance of the requirement under Section 74(2) of the Act, which requires every arrest made under Section 74 of the Act to be reported to the Collector forthwith. It has been submitted on behalf of the appellant that the provision under



Section 74(2) is mandatory because of the use of expression, “must” in sub-Section 2 and for non-compliance of the said provision, the trial as well as the finding of the conviction shall vitiate. In our opinion, the said submission is not tenable, for two reasons. Firstly, Hindi version of sub-Section 2 of Section 74 of the Act reads as under:-

“(2) इस धारा के अधीन सभी गिरफ्तारी कलक्टर को तुरंत प्रतिवेदित की जायेगी।”

27. There is no Hindi equivalent of the expression, “must” present in the Hindi version of the sub-Section 2 of Section 74. Secondly, merely non-communication of the factum of the arrest as required under Section 74(2) of the Act can be said to be an irregularity but not an illegality of the nature which would vitiate the trial. Mere non-communication of factum of arrest, particularly, when no prejudice has been shown to have been caused to the appellant because of non-compliance of the requirement under Section 74(2) of the Act, cannot be the sole basis for this Court to upset the finding recorded by the trial court.

28. In the context of the State of Bihar, it is well settled legal position that if there is difference between English version and Hindi version of a statutory provision enacted by the State legislature, the Hindi version shall prevail.

29. Accordingly, we hold that the requirement of reporting of arrest under Section 74(2) of the Act is directory and not mandatory.



30. However, based on analysis and scrutiny of the evidence on record, we are of the view that the finding of conviction recorded by Trial Court deserves interference in view of apparent consistencies in the evidence of prosecution witnesses. We are not entering into the issue as to whether, the provision under section 82 of the Act is mandatory or not. We leave that question open, which may be decided in an appropriate case in future.

31. Be that as it may, non-compliance of the provision under Section 82 is certainly also one of the factors, which, to a considerable extent puts a question mark on the factum of seizure, in the peculiar facts and circumstances of the case, as noted above.

32. For the reasons discussed above, in our opinion, this appeal deserves to be allowed. The finding of conviction recorded by the Trial Court deserves interference. Accordingly, the impugned judgment of conviction dated 11.08.2021 and the order of sentence dated 18.08.2021 passed by the learned Additional District and Sessions Judge, IInd-cum-Special Judge (Excise), Nalanda, Bihar Sharif in connection with Rahui P.S. Case No. 283 of 2017 are hereby set aside.

33. Consequently, the appellant stands acquitted of the charge of commission of offence punishable under Section 30(a) of the Bihar Prohibition and Excise Act, 2016 by giving him benefit of doubt.



34. The appellant is in jail. Let him be released forthwith, if not required in any other case.

35. Before we part with the present judgment and order, we consider it apt to observe that any statutory provision even if directory, is required to be adhered to by one and all. This Court fails to understand as to why the police officials in this case, failed to adhere to the requirements under Section 74 and 82 of the Act read with Section 73 thereof which have been reproduced hereinabove.

36. We, therefore, consider it appropriate, to direct that let this order be communicated to the Additional Chief Secretary, Department of Prohibition and Excise, Government of Bihar, as well as the Director General of Police, Bihar to consider due implementation of the statutory requirements under Section 74(2) and 82 of the Act.

(Chakradhari Sharan Singh, J)

(Khatim Reza, J)

Gaurav Kumar/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.09.2022
Transmission Date	21.09.2022

