

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.2469 of 2022

Arising Out of PS. Case No.-177 Year-2021 Thana- JHANJHARPUR District- Madhubani

SIYARAM SAH S/o Late Fusi Shah R/o village- Lilaja, Madhepur, P.S.-
Bheja, Block Madhepur, District- Madhubani

... .. Petitioner/s

Versus

The State of Bihar Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Priya Gupta

For the Opposite Party/s : Mr.Satyendra Narayan Singh

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

2 27-07-2023 Heard learned counsel for the parties.

2. This application is filed for quashing of the F.I.R. bearing Jhanjharpur P.S. Case No. 177 of 2021 dated 21.07.2021 registered for the offence under Section 290/34 of the Indian Penal Code Section r/w of the Bihar Excise and Prohibition (Amendment) Act, 2018.

3. As per prosecution case, on the basis of self statement of informant that a video which was viral on social media on 18.07.2021 that the petitioner along with two persons whose faces were not clearly visible were seen consuming liquor and cigarette in a room and in front of them on a table bottle of liquor was found kept and a person was having some snacks and English music was being played. It is further alleged that the matter was investigated by the police after lodging



Sanha and during investigation it transpired that petitioner and two other persons have violated the provisions of the Bihar Excise and Prohibition (Amendment) Act, 2018. On the basis of said information, FIR bearing Jhanjharpur P.S. Case No. 177/2018 was lodged.

4. The learned counsel for the petitioner submits that even if the allegation made in the F.I.R. are accepted on its face value without adding and subtracting anything, even though no offence is made out. The petitioner further submits that he is Zila Adyachh of Bhartiya Janta Party in Madhubani district and he has falsely been implicated in the present case.

5. Learned counsel for the petitioner further submits that A.S.I., Jhanjharpur Police Station without finding as to whether the alleged video is genuine or not or any *prima facie* case has been made out or not had lodged the present F.I.R. It is further submitted that in the entire FIR neither the place of occurrence of alleged incident has been mentioned nor has it been ascertained that whether the alleged incident took place within the territorial jurisdiction of the State of Bihar. The petitioner states that from the perusal of the FIR it is apparent that the present FIR has been lodged only on the basis of viral video on Facebook. Neither liquor has been seized from the



possession of the petitioner nor the petitioner was apprehended by the Police.

6. It is further submitted that in absence of any seizure of liquor from the possession of the petitioner it could not have been stated that whether the alleged liquid in glass or bottle was liquor or something else. The petitioner submits that even if for the sake of arguments it is accepted that the alleged video/incident is of within the territorial jurisdiction of Bihar, it could not be ascertained that the alleged video/incident is either prior to or post the commencement of the Bihar Excise and Prohibition (Amendment) Act. Thus, in that situation, the present FIR is liable to be quashed.

7. It is also been submitted that even if the entire prosecution story and the allegations in the FIR is accepted to be true, then also no offence is made out under Section 290 of the Indian Penal Code. In view of the aforesaid facts and circumstances and submissions made herein above, the present FIR against the petitioner is bad and sheer abuse of the process of the Court and the present case has been brought by the informant with malice in order to wreck vengeance.

8. Learned APP has not been able to support the prosecution of the petitioner, I have considered the submission



of the parties.

9. The FIR has been registered on the basis of Facebook post. The Police has not been able to give the date of occurrence and there is no seizure of bottle etc. A person cannot be prosecuted merely on the basis of Facebook post that too without deciding whether any offence has been committed in the State of Bihar by the petitioner.

10. In these circumstances, no offence is made out against the petitioner and in view of the law down by Hon'ble Supreme Court in the case of **State of Haryana vs. Bhajan Lal (1992) Supp (1) SCC 335** as no offence is made out, this application is allowed.

11. The F.I.R. bearing Jhanjharpur P.S. Case No. 177 of 2021 is hereby quashed with respect to the petitioner.

(Sandeep Kumar, J)

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