

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.15721 of 2023

Arising Out of PS. Case No.-181 Year-2021 Thana- NAUBATPUR District- Patna

Amrish Kumar, Male, aged about 25 years, Son of Sri Krishna Pal @ Krishna Prasad R/O Village- Bedauli, Ward No.11, P.S.- Nabatpur, District- Patna, Pin Code- 801109 (BIHAR)

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Abhishek, Advocate
For the State	:	Mr. Nand Kumar, APP

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL JUDGMENT

Date : 08-05-2023

Heard learned counsel for the petitioner and learned APP for the State.

2. The present application has been filed for quashing the order taking cognizance dated 23.11.2022 passed by the Special Judge, Excise, Danapur, Patna in Special Case No. 2492 of 2021 arising out of Naubatpur P.S. Case No. 181 of 2021 by which cognizance has been taken under Section 30(a) of the Bihar Prohibition and Excise Act.

3. As per the prosecution case, one Anup Kumar Thakur, Sub Inspector of Police, Naubatpur Police Station gave a written report to the Station House Officer, Naubatpur Police Station on 25.03.2021 at about 17:00 hours that the informant along with other police personnel were proceeded for



conducting raid of illegal liquor and while patrolling on evening, they received information that in village Bedauli Amrish Kumar (petitioner) was selling illegal English liquor. On getting such information, the informant informed the Higher Officer and proceeded for verification and needful action and reached at the place of occurrence. On seeing the police personnel, people of the vicinity assembled there and in presence of two independent witnesses, when the informant entered into the house of the petitioner, one boy managed to flee away by scaling the boundary wall of the courtyard taking advantage of the darkness despite being chased by the police personnel. On search, two cartoon of illegal English liquor was recovered from the Straw House (Bhusa Ghar) of the petitioner from which 48 bottles each 180 ml. of Mc Dowell's Luxury Premium Whiskey and 17 bottles each 375 ml. Mc Dowell's Luxury Premium Whiskey were recovered and accordingly, the seizure list was prepared and independent witnesses have put their signature and a copy of the seizure list was pasted on the door of the house of the petitioner.

4. It has been submitted by learned counsel for the petitioner that the petitioner is quite innocent and has committed no offence as has been alleged in the First Information Report



and has falsely been implicated in the present case in the instance of his enemies. Learned counsel submits that the petitioner has not been arrested from the place of occurrence rather his name transpired on the basis of statement of the villagers who took his name as the person who fled away. Learned counsel also submits that from perusal of the seizure list, it appears that the illicit liquor was recovered from the straw (Bhusa Ghar) situated adjacent to the house of the petitioner and the enemies of the petitioner might have planted the said articles in the said straw house (Bhusa Ghar) to implicate the petitioner in the present case.

5. Learned counsel further submits that the petitioner was not present at the time of alleged occurrence rather he was an employee of Qicheng Service Private Limited, 573, Block-1, Alpha-2, Greater Noida (UP) 201306 and he left for Delhi on 19.03.2021 and joined their on 19.03.2021 and at the alleged date of occurrence, he was performing his duty in the said Company.

6. While hearing the quashing application filed by the petitioner, this Court on 28.03.2023 had passed the following order:

“Pursuant to last order dated 21.03.2023, the Station House Officer of



Naubatpur Police Station, Patna and the Investigating Officer of Naubatpur P.S. Case No.181 of 2021 are present in Court.

The contention of the petitioner is that on the date of occurrence he was working in NOIDA and he is not involved in the crime.

The Station House Officer of Naubatpur Police Station, Patna and the Investigating Officer of the case are directed to verify the aforesaid contention of the petitioner after obtaining permission for further investigation as the charge-sheet has been submitted in the case.

After investigation, they will submit a report in the Court below and a copy of the said report shall also be filed in this Court.

The further investigation must be completed within one month from today.

In case, the Investigating Officer of the case wants to verify the truthfulness of the contention of the petitioner that he was working in NOIDA at the time of occurrence, he may visit NOIDA and examine the records and also examine the witnesses in the office of the petitioner at NOIDA. For that, the Investigating Officer of the case may seek necessary directions from the superior officials.

List this case after one month for further hearing.

The personal appearance of the police officials is dispensed with for the present.”

7. Pursuant to the order dated 28.03.2023, the police submitted a report after verifying the contention of the petitioner that on the date of occurrence, he was present in Delhi and not in his village home. From the report it appears that one Amrish Kumar was employed in Qicheng Service Private Limited and they used to provide labour to Maowell Electronics Private



Limited and on the date of occurrence, the petitioner was found to be working there.

8. It has also been submitted by the petitioner that the recovery is not from the possession of the petitioner or from the portion of the joint family house in which the family of the petitioner resides. The recovery is from the straw house (Bhusa Ghar) which is not a part of the Main House and therefore the recovery cannot be said to be from the conscious possession of the petitioner.

9. It has also been argued on behalf of the petitioner that the Bhusa Ghar was in an abandoned condition which is apparent from the fact that the seizure list was not handed over to any member of the joint family but was pasted on the wall.

10. Learned APP has opposed the prayer of the petitioner and has submitted that cognizance has been taken rightly against the petitioner and the same cannot be quashed considering the alibi of the petitioner.

11. I have considered the submissions of the parties. It is no doubt that the recovery of illicit liquor is from a straw house (Bhusa Ghar) and none was arrested on the spot though in the F.I.R., the police has said that the petitioner was seen running away from the spot. Moreover, from the report of the



police who had gone to verify the alibi of the petitioner, it appears that the petitioner on the date of occurrence was working in Delhi.

12. Considering the fact that the recovery is from a Bhusa Ghar, the petitioner was not caught on the spot and the alibi of the petitioner, I am of the opinion that the prosecution of the petitioner cannot be continued when there is no recovery from his possession.

13. In view of the discussions made above, this application is allowed.

14. The order taking cognizance dated 23.11.2022 passed by the Special Judge, Excise, Danapur, Patna in Special Case No. 2492 of 2021 arising out of Naubatpur P.S. Case No. 181 of 2021 is hereby quashed.

(Sandeep Kumar, J)

P. Kumar

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	13.12.2023
Transmission Date	

