IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.939 of 2016

Arising Out of PS. Case No.-239 Year-2016 Thana- GOVERNMENT OFFICIAL COMP. District- Muzaffarpur

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Rakesh Kumar @ Rakesh Kumar Singh @ Raku S/o late Jagarnath Singh R/o Bharti Bhawan, Near Chandralok College, Naya tola, P.S. Kazi Mohammadpur, District-Muzaffarpur

... ... Petitioner

Versus

1. The State Of Bihar Through The Collector, Muzaffarpur
2. The Superintedent of Excise, Muzaffarpur
3. The Sub-Inspector of Excise, Nagar Circle, Muzaffarpur

... ... Respondents

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Appearance :

For the Petitioner/s	:	Mr. Satyabir Bharti
		Ms. Sushmita Sharma, Adv
		Mr. Abhishek Anand, Adv
		Ms. Kanu Priya, Adv
For the Respondent/s	:	Mr. Sunil Kumar Mandal, SC 3
		Mr. Bipin Kumar, AC to SC 3

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL JUDGMENT
Date : 15-09-2023

This application has been filed for quashing of the entire proceeding arising out of Excise Case No. 239 of 2016 registered under Sections 47(a), 53(c), 54 and 57 of the Bihar Excise Act, 1915 as amended by the Bihar Excise Amendment Act, 2016, pending in the Court of the Chief Judicial Magistrate, Muzaffarpur.

2. As per the complaint, the police acting upon the secret information raided one hotel namely “Hotel Chandralok Continental” and from the hotel premises three bottles of foreign liquor containing 750ml each was recovered. Accordingly, the owner of the hotel namely Md. Rizwanul Haque and seven employees of the said hotel were arrested. In the said FIR the name of petitioner has also been included as an accused being the owner of the hotel and he has been shown to have absconded from the place of occurrence. Thereafter the seizure memo was prepared.

3. Learned counsel for the petitioner submits that the allegation against the petitioner is baseless as the petitioner is the owner of the land which was given on lease to the accused Md. Rizwanul Haque, who was running the said hotel in the leased land.

4. Learned counsel for the petitioner further submits that the hotel was being operated since 2010 and the petitioner is the landlord of the premises and has no role to play in running the said hotel. He further submits the petitioner being the landlord is not residing in the hotel premises and has no interference in the day to day activities of the hotel so it cannot be presumed that the petitioner has active role in the commission of the offence in the hotel premises.

5. Apart from the aforesaid facts, learned counsel for the petitioner also submits that the State Government by notification dated 05.04.2016, in exercise of powers conferred under Section 19(4) of the Bihar Excise Act, 1915, imposed ban on wholesale or retail trade and consumption of foreign liquor by any license holder or any person in the whole of the State of Bihar and from perusal of the aforesaid notification, it would appear that sale and consumption of foreign liquor has been banned in the entire State but its possession has not been prohibited. Therefore, mere possession of foreign liquor within the prescribed limit is not an offence under the provisions of Bihar Excise Act, 1915 and the notification issued thereunder.

6. Learned counsel for the petitioner further submits that Section 19(1) of the Bihar Excise Act, 1915 permits possession of intoxicant by any person not being a licensee to the extent as prescribed under Section 5 of the said Act, which is maximum up to three litres of foreign liquor but in the present case there is recovery of 2.25 litres of foreign liquor from the premises of the hotel, which is well within the prescribed limit for possession and therefore no offence under Section 47(a) of the Bihar Excise Act, 1915 is made out.

7. Learned counsel for the petitioner further submits that in the present case there is no allegation against any person of having been found of having consumed foreign liquor in the premises and merely 2.25 litres has been recovered from the hotel premises and therefore, the ingredients of Section 53(c), 54 and 57 of the Excise Act are not made out against the petitioner.

8. Learned counsel for the petitioner has relied upon a Division Bench Judgment of this Court rendered in the case of ***Ram Sumir Sharma Vs. State of Bihar*** reported in ***2016 (4) PLJR 435***.

9. By making the aforesaid submissions, learned counsel for the petitioner submits that no offence whatsoever under Section 47(a), 53(c), 54 and 57 of the Excise Act are made out against the petitioner and the prosecution of the petitioner may be quashed.

10. In this case a counter affidavit has been filed on behalf of the respondents. In the counter affidavit, it has been stated that the raiding team were not informed by any of the employees of the hotel that the land on which the hotel is situated is on lease and accused Md. Rizwanul Haque identified himself as a Manager of the said hotel. It has also been stated that the lease extension deed dated 01.06.2016 is not a registered document. It has also been stated that on enquiry it was found that the petitioner was the owner of the hotel and the existence of unregistered extended lease deed was not in the knowledge of the raiding team.

11. I have heard and considered the submissions of the parties and also perused the materials available on record.

12. Annexure-1 is the rent agreement entered between the petitioner and the accused Md. Rizwanul Haque. From perusal of the rent agreement, it appears that land in question was leased out by the mother of the petitioner in the year 2010 and the same was renewed from time to time and lastly on 01.06.2016 the same was extended for a period of the eleven months. The documents such as, registration certificate of Hotel Chandralok Continental, Income Tax Return Acknowledgment of Rizwanul Haque and the certificate issued by the Bank of Maharashtra, Muzaffarpur Branch [Annexure-2 (series)] would also indicate that the petitioner is not the owner of the hotel from which the liquor has been recovered. It also appears from the record that the search and seizure of the premises in question was made on 17.08.2016, at that time the renewed rent agreement was in operation. Merely being the owner of a premises, which was leased out to a person, who was running a hotel in the said premises and from where the alleged recovery of foreign liquor was made, the petitioner cannot be prosecuted for the same.

13. Furthermore, from perusal of Section 19(1) of the Bihar Excise Act, 1915, it would appear that the notification permits a person, who is not a licensee, to possess foreign liquor not beyond the maximum limit, as prescribed under Section 5 of the notification. Section 5 permits the limit of 3 litres of foreign liquor and 5.2 litres of Beer. In terms of Section 19(1) of the Bihar Excise Act, 1915, three litres of foreign liquor can be possessed by a person who is not a licensee. In the present case, only 2.25 litres of foreign liquor has allegedly been recovered from the hotel premises, which is well within the permissible limit as per Section 19(1) of the aforesaid Act. Mere possession of foreign liquor within the permissible limit was not banned on the date of alleged search and seizure i.e. on 17.08.2016.

14. A Division Bench of this Court had an occasion to consider this issue in the Case of ***Ram Sumir Sharma Vs. State of Bihar(supra).*** In the aforesaid case the search and seizure was made on 21.05.2016**.** Paragraph nos. 19 and relevant portion of paragraph 20 of the aforesaid decision read as follows:-

"19. A reference to the aforesaid Section

19(1) of the Act and the notification would show that the notification does not prohibit possession simplicitor. Possession of liquor above the prescribed limit is, thus, an offence by the person, who is found in possession thereof. Possession has to be conscious possession of a person.

20. Thus seen, there is no concept of vicarious or constructive liability. That being so, the position in law would be that only the person, who is in conscious possession of liquor beyond the prescribed limit, can be prosecuted ....”

15. Further, the ingredients section 53(c), 54 and 57 of the Bihar Excise Act, 1915 are also not made out against the petitioner in view of the fact that the petitioner is not the owner of the hotel rather he is the landlord of the land on which one Md. Rizwanul Haque was running the hotel in question and there is no allegation against the petitioner of having found consuming foreign liquor in the said hotel premises.

16. For the foregoing reasons, this Court is of the view that none of the offences, as alleged in the FIR, are made out against the petitioner and the prosecution of the petitioner is an abuse of the process of the Court and the same deserves to be quashed.

17. Accordingly, this application is allowed and the complaint bearing Excise Case No. 239 of 2016 against the petitioner for the offence under Sections 47(a), 53(c), 54 and 57 and all the consequential proceedings arising out of the same are hereby quashed so far as it relates to the petitioner only.

(Sandeep Kumar, J)

Vikas/Pawan

AFR/NAFR	N.A.F.R.
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