

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.17775 of 2016

Arising Out of PS. Case No.-21 Year-2014 Thana- BAGENGOLA District- Buxar

1. Dharmendra Kumar Mishra and Ors son of Bishwanath Mishra, resident of Village- Dhananjaypur, P.S. Simri, District- Buxar.
2. Shamser Bahadur Singh @ Shamser Bhadur Singh @ Munna Singh son of Late Suraj Kumar Singh, resident of Village- Began, P.S.- Began Gola, District- Buxar.
3. Naveen Chodhary son of Prabha Choudhary resident of Village- Baruhan, P.S.- Bagen Gola, District- Buxar.
4. Shiv Narayan Sah son of Late Banarshi Sah, Resident of Village- Naya Bazar Buxar, P.S.- Buxar Town, District- Buxar.
5. Premchandra Prasad @ Sipahi son of Late Thakur Sah Resident of Village- Naya Bazar, P.S.- Buxar Town, District- Buxar.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Bachan Jee Ojha, Advocate
For the Opposite Party/s : Mr. J.N.Thakurapp, Advocate

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

3 13-09-2023 Heard Mr. Bachan Jee Ojha, learned counsel appearing on behalf of the petitioner and Mr. J.N. Thakurapp, learned counsel appearing on behalf of the State.

2. The present application has been filed for quashing the order taking cognizance dated 25.07.2015 passed in Bagen Gola P.S. Case No. 21 of 2014 passed by Shri Madhukar Singh, Judicial Magistrate, First Class, Buxar who has been pleased to take cognizance for offence under Section 47(a) of Bihar Excise Act, 1915.

3. Learned counsel appearing on behalf of the



petitioner submits that the allegation made in the F.I.R. lodged against the petitioner under Section 47(a) is not sustainable in view of the fact that Superintendent of Excise has furnished its report dated 19.03.2014 giving details about the facts that no irregularity was committed by the petitioner. The petitioner is a licensee in terms of the Act and the stocks were verified and the same were found as per supply made to him from the company.

4. Having perused the complaint as well as the final form submitted and the report of the Superintendent of Excise, Buxar, it would be relevant to reproduce the provision of Section 47A which is reproduced as under:

“[47A. Commission of offence by companies.-(1) If the person committing an offence under this Act is a company as well as every person in charge of and responsible to the company for the conduct of its business at the time of commission of the offence, shall be deemed to be guilty of offence, and shall be liable to be proceeded against and punished accordingly.

Provided that where a company has different establishment or branches or different units in any establishment or branch, the concerned Chief Executive and the person in charge of such establishment, branch, unit nominated by the company as responsible for the conduct of business shall be liable for contravention in respect of such establishment, branch or unit:

Provided further that nothing in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his



knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of any director, manager, officer shall be liable to be proceeded against and punished accordingly.

(3) This section shall not apply to such companies where the majority shareholding is held by Central or any State Government or such companies as the Board may exempt.

Explanation.- *For the purpose of this section – “company” means any body corporate and includes a firm or other association of individuals; and “director”, in relation to the firm, means a partner in the firm.”*

5. From perusal of the report of the Superintendent of Excise, it appears that no violation of Section 47(a) has been committed by the petitioner. The petitioner cannot be allowed to face the criminal proceeding. The order taking cognizance dated 25.07.2015 passed in Bagen Gola P.S. Case No. 21 of 2014 is hereby set aside and quashed considering that there is no violation of any terms and conditions of License No. 01 of 2013-14 for the retail vend of country liquor / spiced Country liquor and foreign liquor for Consumption “ON” the premises (for composite liquor shop).



6. The quashing application stands disposed of.

(Purnendu Singh, J)

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