

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.36077 of 2023

Arising Out of PS. Case No.-231 Year-2023 Thana- GOVERNMENT OFFICIAL COMP.
District- Banka

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BAPAN KUMAR SINGH son of Late Mayanand Singh Village- Bhojpur Ps-
Tarawari Dist- Araria

... .. Petitioner/s

Versus

1. The State of Bihar through the Home Secretary, Home Affairs Department,
Bihar, Patna Bihar
2. The Additional Chief Secretary Prohibition and Excise and Registration
Department (Excise) Bihar, Bihar
3. The Director General of Police, Bihar Bihar
4. The District Magistrate Bihar
5. Gauri Shankar Kumar son of Asharfi Sah Sub Inspector Excise Posted at
Excise Ps-Banka, Dist- Banka P/A- Bakhari Bazar Ps- goverdhana Dist-
West Champaran at Bettiah

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Jitendra Kumar Pandey
For the Opposite Party/s : Mr. Dr. Mrityunjaya Kr. Gautam

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

4 08-08-2023 As pointed out by the learned counsel for the

petitioner, in the order dated 25.07.2023, it was directed to list

this case on “07.08.2023” but due to typographical error the

same has been typed as “07.01.2024”.

2. Let the same be corrected and read as “07.08.2023”

in place of “07.01.2024”.

3. The order dated 25.07.2023 is modified to the

extent as above.

4. Heard the parties.

5. This application has been filed for quashing the

entire criminal proceeding of the FIR including the FIR bearing

Banka Excise P.S. 231 of 2023 registered for the offences under



Sections 30 a and 37 of the Bihar Prohibition and Excise Act 2016.

6. The prosecution story in short is that when the informant and other police officials were checking the vehicles, they stopped a vehicle in which the petitioner and other co-accused persons were sitting. Out of the three persons two were found to have consumed liquor and from the vehicle a bottle was also recovered in which liquor was mixed with water.

7. Learned counsel for the petitioner submits that the petitioner is innocent and nothing has come against him in the breath test and the FIR of the incident was lodged after a delay of more than 24 hours.

8. Learned counsel for the petitioner further submits that one co-accused is an advocate and due to some altercation between the co-accused and the informant this false case has been lodged.

9. It has further been submitted by the learned counsel for the petitioner that the seizure list which has been prepared by the police is also a vague one as it is not mentioned in the list that how the police officials differentiated between water and liquor which was present in the vehicle.

10. Learned APP has opposed the prayer of the



petitioner by contending that the petitioner was also travelling in the vehicle in which the co-passengers have consumed liquor and as the liquor was found in the vehicle so the petitioner may also be prosecuted.

11. I have heard and considered the submission of both the parties.

12. It is an admitted fact that the petitioner was not found in a drunken condition, though, the bottle which is alleged to have been seized from the vehicle was not seized from the possession of the petitioner and the petitioner cannot be fastened with criminal liability for any bottle in which some liquor and water was found.

13. From reading of the FIR, it appears that the prosecution of the petitioner is nothing but an abuse of the process of the Court and the same cannot be allowed to continue.

14. Accordingly, the FIR bearing Banka Excise P.S. 231 of 2023 and the entire criminal proceeding of the aforesaid FIR is hereby quashed with regard to the petitioner only.

(Sandeep Kumar, J)

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