IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1118 of 2019

Arising Out of PS. Case No.-16 Year-2018 Thana- CHHAURADANO District- East Champaran

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ASHAB ALAM S/O Mozahir Hussain R/O Village- Uchidih, Adapur, Adapur, East Champaran, Bihar-845301, Presently working as Head Havaldar at the office of the Commissioner of CGST and Central Excise, Patna-1, Patna.

... ... Petitioner/s

Versus

1. The State Of Bihar Through The Chief Secretary, Government Of Bihar, Patna. Bihar
2. The Principal Secretary, Department of Home, Government of Bihar, Patna. Bihar
3. The Principal Secretary, Prohibition, Excise and Registration Deptt., Government of Bihar, Patna. Bihar
4. The Director of Prosecution, Government of Bihar, Patna. Bihar
5. The Director General of Police, Government of Bihar, Patna. Bihar
6. The Superintendent of Police, East Champaran. Bihar
7. The Union of India through the Secretary (Revenue), Ministry of Finance, North Block, New Delhi -110001, New Delhi.
8. The Commissioner, Customs (Prev), Patna, 5th Floor, Kendriya Rajaswa Bhawan, Bir Chand Patel Path, Patna-800001
9. Shri Shailendra Kumar Singh, Sub Inspector, Chhauradano Police Station, Raxaul, East Champaran. Bihar.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Amit Pandey, Advocate
For the Respondent/s	:	Mr. Suman Kumar Jha, AC to AAG-3

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL JUDGMENT
Date : 20-03-2023

Heard the parties.

This application has been filed for quashing of F.I.R vide Chhauradano P.S. Case No. 16 of 2018 registered for the offence under Sections 272, 273/34 of the Indian Penal Code and under Section 30(a) of the Bihar Prohibition and Excise Act

2016 pending in the Court of learned Special Judge, Excise, Motihari. Further prayer of the petitioner is to declare that Shri T.N. Rai, Sub-Inspector of Police, Chhauradano Police Station is not competent to investigate Chhauradanao P.S. Case No. 16 of 2018.

The prosecution case is that the petitioner, at the relevant time, was working as head Havaldar in the office of Commissioner of CGST and Central Excise, Headquarter, Patna. The present F.I.R. has been filed by the Bihar Police under Section 30(a) of the Bihar Prohibition and Excise Act 2016 and under Section 272 and 273/34 of the Indian Penal Code *inter alia* alleging that the petitioner was indulged in illegal smuggling of Nepali liquor.

The main ground on which the petitioner seeks quashing of his prosecution is that for the same occurrence a departmental proceeding has been initiated against him and the same has been conducted by the Custom Authorities and after detailed investigation the petitioner has been exonerated by order dated 02.02.2023 passed by the Joint Commissioner / Disciplinary Authority Central GST & CX, Patna-I and accordingly the charges levelled against the petitioner were dropped.

In support of the submission, learned counsel for the petitioner has relied upon a judgment of the Hon'ble Supreme Court in the case of ***Ashoo Surendranath Tewari vs. Deputy Superintendent of Police, EOW, CBI and Anr. 2020 (9) SCC 636.***

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

It is an admitted position that for the same occurrence, a departmental proceeding has been initiated against the petitioner by the custom authorities, in which he has been exonerated by order dated 02.02.2023.

The Hon'ble Supreme Court in number of decisions has held that the standard of proof in a departmental proceeding, being based on preponderance of probability is somewhat lower than the standard of proof in a criminal proceeding where the case has to be proved beyond reasonable doubt.

In the case of ***Ashoo Surendranath Tewari vs. Deputy Superintendent of Police, EOW, CBI and Anr. (supra)*** the Hon'ble Supreme Court has relied upon the decision rendered in the case of ***P.S. Rajya vs. State of Bihar (1996) 9 SCC 1*** wherein the question came up for consideration before

Hon’ble Supreme Court was whether the respondents were justified in pursuing the prosecution against the appellant notwithstanding the fact that on an identical charge the appellant was exonerated in the departmental proceedings.

Paragraph no.17 of the aforesaid decision of ***P.S. Rajya*** case (supra) has been quoted in the case of ***Ashoo Surendranath Tewari vs. Deputy Superintendent of Police, EOW, CBI and Anr. (supra),*** which reads as under:-

> *“17. At the outset we may point out that the learned counsel for the respondent could not but accept the position that the standard of proof required to establish the guilt in a criminal case is far higher than the standard of proof required to establish the guilt in the departmental proceedings. He also accepted that in the present case, the charge in the departmental proceedings and in the criminal proceedings is one and the same. He did not dispute the findings rendered in the departmental proceedings and the ultimate result of it.”*

Considering the aforesaid law, the Hon’ble Supreme Court has discharged the appellant from the offences registered under the Indian Penal Code.

Applying the aforesaid principle laid down by the Hon’ble Supreme Court in the case of ***P.S. Rajya vs. State of***

Bihar (supra) and Ashoo Surendranath Tewari vs. Deputy Superintendent of Police (Supra) to the facts of the present case, this Court is of the considered view that the prosecution against the petitioner cannot continue on the basis of the same charge for which he has been exonerated in a departmental proceeding conduced by the Custom Authorities.

Accordingly, this writ application is allowed. Consequently, the F.I.R. vide Chhauradano P.S. Case No. 16 of 2018 registered for the offences under Sections 272, 273/34 of the Indian Penal Code and under Section 30(a) of the Bihar Prohibition and Excise Act 2016 and all consequential proceedings arising out of the said FIR are quashed.

(Sandeep Kumar, J)

Guddu/-

AFR/NAFR	A.F.R.
CAV DATE	N/A.
Uploading Date	24.03.2023
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