IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.56984 of 2023

Arising Out of PS. Case No.-312 Year-2022 Thana- FATEHPUR District- Gaya

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ADITYA KUMAR SON OF SRI SUNDERPAL RESIDENT OF 626-B, SUBHASH NAGAR, P.S.- CIVIL LINE, DISTRICT- MEERUT, (UTTAR PRADESH), PRESENTLY RESIDING AT B-505, VASIKUNJ APARTMENT, SAGUNA MORE, PS- RUPASPUR, DISTT- PATNA

... ... Petitioner/s

Versus

The State of Bihar

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. S.D. Sanjay, Sr. Advocate Mrs. Priya Gupta, Advocate Mr. Mohit Agrawal, Advocate Mr. Lokesh Kumar, Advocate Mr. Vishal Kumar, Advocate
For the State	:	Mr. Chandra Bhushan Prasad, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL JUDGMENT
Date : 13-12-2023

Heard learned Senior Counsel for the petitioner and learned A.P.P. for the State.

2. The present application has been filed seeking quashing of the order dated 20.04.2023 passed by the learned Court of Exclusive Excise Court No.1, Gaya in Fatehpur P.S. Case No. 312 of 2022, dated 28.05.2022, Excise G.R. No. 642 of 2022 whereby cognizance has been taken under Sections 51 and 52 of the Bihar Prohibition and Excise Act, 2016 against the accused persons, including the petitioner.

3. Learned Senior counsel for the petitioner submits that the petitioner, at the relevant point of time, was the Senior

Superintendent of Police, Gaya and an FIR being Fatehpur P.S. Case No. 312 of 2022 dated 28.05.2022 came to be instituted implicating him under Section 51 of the Bihar Prohibition and Excise Act, 2016. Learned Senior Counsel further submits that the allegations as alleged in the FIR was that on 26.03.2021, 170 litres of country-made liquor was recovered from a Santro car but no FIR was lodged by Sanjay Kumar, S.H.O., Fatehpur Police station and the petitioner did not take any step to get the FIR instituted, further on instruction of the senior police officer, the FIR being Fatehpur P.S. Case No. 112 of 2021 dated 13.04.2021 was registered. It is next alleged that it came to the knowledge that the petitioner had initiated disciplinary proceedings against Shri Sanjay Kumar, the then SHO, Fatehpur for lodging the FIR with delay and punished him with censure, further that the aforesaid facts indicated towards the illegal activities of Sanjay Kumar, the then SHO, Fatehpur and the action taken by the petitioner against him indicates towards illegality and irregularity of the petitioner which was an offence under Section 51 of the Bihar Prohibition and Excise Act, 2016.

4. Learned Senior Counsel for the petitioner submits that from perusal of the allegations as alleged in the FIR, it would manifest that even if the allegations are accepted on its face value,

then also no criminal offence is made out against the petitioner much less any offence under Sections 51 and 52 of the Bihar Prohibition and Excise Act, 2016. Learned Senior Counsel further relied on the pleadings made at paragraphs ‘5’ to ‘9’ of the quashing application to submit that the petitioner is a bold officer and did commendable work wherever he was posted as detailed in those paragraphs. It is next submitted that from perusal of Annexure-3 to the quashing application, it would manifest that while the petitioner was the Senior Superintendent of Police, Gaya, the maximum number of liquor cases were instituted and the culprits were arrested. It is submitted that the moment the present FIR came to be instituted after a delay of nearly one year from the date of occurrence, the petitioner moved this Court by filing Cr. Misc. No. 39928 of 2022 seeking anticipatory bail. It is further submitted that this Court vide order dated 08.08.2022 in Cr. Misc. No. 39928 of 2022 was pleased to grant anticipatory bail after taking into consideration the fact that under the Bihar Prohibition and Excise Act, anticipatory bail is not maintainable.

5. It is next submitted that after the petitioner was granted anticipatory bail, the police investigated the case threadbare and came to a considered conclusion that petitioner was innocent and thus submitted Final Form No. 285 of 2022 dated

10.09.2022 (Annexure-7 to the quashing application) in the Court of learned Additional Judge, Excise Gaya as mistake of law.

6. Learned Senior Counsel for the petitioner thus submits that the thrust of the allegation hinges around Sanjay Kumar, the S.H.O., who had not instituted the FIR, though 170 litres of liquor was recovered from the Santro car. It is further submitted that the petitioner was the Senior Superintendent of Police of the district, as such, it cannot be presumed that he was having information on day-to-day basis with respect to the concerned police station, the practical problems cannot be ignored. It is next submitted that in hierarchy there were many officers in between the petitioner and the officer-in-charge of the concerned police station to ensure that such occurrences do not take place but then they have not been made an accused in the present case which further goes to demonstrate that the present case has been instituted for some ulterior reason because of animosity in between the petitioner and some other higher officials.

7. Learned Senior Counsel for the petitioner submits that the learned trial court differing with the police report took cognizance of the offences under Sections 51 and 52 of the Bihar Prohibition and Excise Act, 2016 against the petitioner. It is further submitted that from bare perusal of the order impugned, it would

manifest that the same has not been passed in consonance with the law. It is next submitted that from perusal of the penultimate paragraph of the impugned order i.e. paragraph-13, it would manifest that the learned Additional Sessions Judge-cum-Exclusive Special Judge, Excise Court No.1, Gaya recorded:-

> "According to legal maxim "Ignorantia facti doth excusant, Ignorantia juris non-excusant" and it is found in section 76 and 79 of the Indian Penal Code, and it states that a person who commits an offence in the view of a mistake of fact and in good faith that he was bound by law, will not be considered as an offence but "mistake of law" is nothing but misunderstanding the law, which is not valid defence, except for kids, lunatics and mad persons. It is assumed that everyone knows and understands the law of nation. Hence final form submitted under mistake of law is not acceptable."

8. Learned Senior counsel for the petitioner submits that the reason assigned by the learned Additional Sessions Judge-cum-Exclusive Special Judge, Excise Court No.1, Gaya is completely erroneous. It is further submitted that perhaps what escaped the attention of the learned Additional Sessions Judge is that the police, after investigation, submitted final form by recording that the institution of the case was a mistake of law and it is not the case of the police that the petitioner committed any act on account

of mistake of law. It is thus submitted that the reasoning given by the learned trial court makes the order impugned vulnerable.

9. Learned Senior Counsel for the petitioner next submits that in the nature of allegation as alleged in the FIR prima facie no offence is made out under Section 51 of the Bihar Prohibition and Excise Act, 2016.

> "Section 51. Penalty on excise officer or police officer refusing to do duty. - Any excise officer or police officer who, without lawful excuse, refuses to perform or withdraws himself from the duties of his office, unless expressly allowed to do so in writing by the Excise Commissioner or Collector, or unless he shall have given to his official superior officer two months' notice in writing of his intention to do so, or who shall be guilty of cowardice shall be punishable with imprisonment which may extend to three months or with fine which may extend to ten thousand rupees, or with both."

10. Learned Senior Counsel for the petitioner placing reliance on Section 51 of the Excise Act submits that an offence under Section 51 of the Excise Act becomes applicable only when the police officer without lawful excuse, refuses to perform or withdraws himself from the duties of his office, unless expressly allowed to do so in writing by the Excise Commissioner or Collector.

11. It is submitted that it is not the case of the prosecution that the petitioner, in any manner, was not willing to perform his duty, it was just that the petitioner being the Senior Superintendent of Police of the district may not be knowing what was seized by the concerned police station, as the Senior Superintendent of Police of the district is not omnipresent at each and every place. It is also submitted that the moment it came to the notice of the petitioner that dereliction of duty has been committed by Sanjay Kumar the S.H.O. he immediately censured him and thereafter even the FIR was instituted with regard to the liquor which was alleged to have been seized from a Santro car.

12. Learned Senior Counsel next draws the attention of the Court to para 20 of the counter affidavit Annexure-A series to submit that it is a letter dated 27.05.2022 issued by the Inspector General of Police, Head Quarter, Bihar, Patna addressed to the Senior Superintendent of Police, Gaya wherein it has been recorded that the Inspector General of Police, Head Quarter, Bihar, Patna has been directed for getting an FIR instituted under Section 51 of the Bihar Prohibition and Excise Act, 2016 against Sanjay Kumar and the petitioner.

13. Learned Senior Counsel for the petitioner thus submits that it absolutely does not stand to reason that whether the

case was of such importance that it required direction to the Inspector General of Police, Head Quarter, Bihar, Patna for getting the present FIR instituted. In the same breath, learned Senior Counsel for the petitioner further submits that even no offence under Section 52 of the Bihar Prohibition and Excise Act, 2016 is made out in the nature of allegation as alleged in the FIR.

14. It is next submitted that Section 52 incorporates:-

> "52. Penalty for offences not otherwise provided for. - Whoever does any act in contravention of any of the provisions of this Act or any rule or order made there under and punishment for which has not been otherwise provided for such contravention, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to seven years or with fine which shall not be less than one lakh rupees but which may extend to ten lakh rupees or both."

15. Learned Senior Counsel thus submits that it is not the case of the prosecution that petitioner acted in contravention of any of the provisions of this Act, Rule or order. The allegation is that he did not act with promptness when it cannot be construed even practically that petitioner being the Senior Superintendent of Police of the district would have been knowing that such an occurrence had taken place in some police station under his jurisdiction when there are so many officials in between the Senior

Superintendent of Police and the Inspector to take care of such situation and the moment the petitioner came to know about the occurrence he censured the S.H.O. and even got the FIR instituted.

16. Mr. Chandra Bhushan Prasad, learned A.P.P. for the State submits that a counter affidavit has been filed duly sworn by the Additional Director General of Police (Prohibition), Head Quarter, Bihar.

17. Learned A.P.P. is not in a position to rebut the submissions of the learned Senior Counsel for the petitioner that the police after investigation submitted final form in the case after threadbare investigation and that offence under Sections 51 and 52 of the Excise Act, 2016 in the nature of allegation as alleged in the FIR is not made out as it is not the case of the prosecution that the petitioner deliberately did not act.

18. Considering the submissions made by the learned Senior Counsel for the petitioner and the fact that the police submitted final form exonerating the petitioner of the charges and, prima facie, no offence under Sections 51 and 52 of the Excise Act is made out and the reason assigned by the learned trial court in taking cognizance as recorded hereinabove is erroneous, the order dated 20.04.2023 passed by the learned Court of Exclusive Excise Court No. 1, Gaya in Fatehpur P.S. Case No. 312 of 2022 dated

28.05.2022, Excise G.R. No. 642 of 2022 whereby cognizance of the offences under Sections 51 and 52 of the Bihar Prohibition and Excise Act, 2016 has been taken, is hereby quashed.

19. Accordingly, this application is allowed.

(Satyavrat Verma, J)

Kundan/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	14.12.2023
Transmission Date	14.12.2023