IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.4072 of 2023

Arising Out of PS. Case No.-106 Year-2023 Thana- KANKARBAG District- Patna

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Guddu Mallik S/O Late Hiralal Mallik Resident of Tempo Stand Jhopadpatti, Ps- Kankerbagh, Dist- Patna

... ... Appellant/S

Versus

The State of Bihar

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Anurag Anand, Advocate
	:	Mr. Upendra Kumar, Advocate
For the Respondent/s	:	Mr. Mukeshwar Dayal, APP

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA

ORAL ORDER

4 08-12-2023

I.A. No. 01 of 2023

Heard learned counsel appearing on behalf of the parties.

2. This Interlocutory application has been filed under Section 5 of the Limitation Act by the appellant for condonation of delay of 169 days caused in filing the present appeal.

3. For the reason as mentioned in I.A., the delay of 169 days caused in filing the present appeal is condoned.

4. Interlocutory Application No. 01 of 2023 stands allowed.

Cr. Appeal (SJ) No. 4072 of 2023

5. While hearing on the point of admission, it appears that present appeal preferred against impugned order/judgment of conviction dated 01.02.2023 passed by learned Special Judge,

Excise Patna, Sadar, where appellant convicted under Section 37 of Bihar Prohibition and Excise (Amendment) Act, 2018 in Kankerbagh Excise P.S. Case No. 106 of 2023, Special Excise Case No. 1146/2023, after pleading guilty.

6. The relevant part of the impugned judgment is reproduced herein below for better understanding:-

> "He pleads guilty. I am *prima facie* satisfied that the charge against him is well founded. I.O. of the case has submitted in his enquiry report that accused has already being forwarded to judicial custody in connection with KANKARBAGH P.S. Case No. 673/2022 dated 23.07.2022 under Section 37 Bihar Prohibition Excise (Amendment), Act, 2022. On perusal of aforesaid case record it transpires that accused namely Guddu Mallik previously convicted for the offence under Section 37 Bihar Prohibition Excise (Amendment) Act, 2022 in view of Notification dated 05th April 2022 issued by Bihar Prohibition and Excise Department, Govt. of Bihar.
>
> Hence, the accused of therefore to undergo simple imprisonment for 01(One Year) under Section 37 of Bihar Prohibition and Excise Act, 2016"

7. It would further appropriate to reproduce Section 375 of the Cr.P.C.

> ***"375. No appeal in certain cases when accused pleads guilty-*** *Notwithstanding anything contained in section 374, where an*

accused person has pleaded guilty and has been convicted on such plea, there shall be no appeal,-
(a) if the conviction is by a High Court; or
(b) if the conviction is by a Court of Session, Metropolitan Magistrate or Magistrate of the first or second class, except as to the extent or legality of the sentence"

8. It appears from the perusal of record that enquiry report submitted under Section 37 of Bihar Prohibition Excise (Amendment) Act, 2022, where, appellant also previously convicted for the same offence. The appellant pleaded guilty, and as such, learned Special Court held the appellant guilty for the offence charged with. Aggrieved thereof, appellant has preferred the appeal in hand.

9. Undisputedly, the conviction proceeds on the accused pleading guilty. Appeal against a conviction on pleading guilty, is hit by Section 375 of Cr.P.C. as discussed above. Accordingly, appeal is therefore, not maintainable and same is accordingly, dismissed at the stage of admission itself.

(Chandra Shekhar Jha, J)

Archana/-

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