IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.5856 of 2023

Arising Out of PS. Case No.-84 Year-2017 Thana- BISHUNPUR CHOWK District- Darbhanga

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PRASHANT KUMAR MISHRA Son of Late Dinesh Mishra R/V- Tira, Jatmalpur Tira, P.S.- Kalyanpur, Dist- Samastipur

... ... Petitioner/s

Versus

1. The State of Bihar
2. Assistant Sub Inspector, Bishanpur P.S., Darbhanga.

... ... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Prava Shankar Mishra, Advocate
Mr. Shambhu Nath Jha, Advocate

For the Opposite Party/s : Mr. Mohammed Arif, APP

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CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL ORDER

8 06-05-2024 1. Heard learned counsel for the petitioner and learned APP for the State.

2. The petitioner has filed the instant application praying for quashing the order dated 1.12.2022 passed by the learned Special Judge, Excise Act I, Darbhanga in connection with Vishanpur P.S. Case no.84 of 2017 whereby charge under section 30(a) and 41 of the Bihar Prohibition and Excise Act, 2016 has been framed against the petitioner while making correction in the order taking cognizance dated 9.7.2018.

3. As per the prosecution case, in course of checking, on being signalled to stop, the petitioner who was on a motorcycle, made an attempt to escape but was caught. On search, 375 ml. of IMFL was recovered from his possession for

which he could not give any satisfactory reply. Accordingly, the F.I.R. being Vishanpur P.S. Case no.84 of 2017 was registered on 12.11.2017 under sections 30(a) and 41 of the Bihar Prohibition and Excise Act, 2016 (herein after referred to as 'the Excise Act').

4. Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the case. After investigation, chargesheet was submitted on 20.5.2018 which was clearly backdated for the reason that the same was submitted by the Investigating Officer of the case in the learned Court below only on 9.7.2018 without any explanation for the delay. On the same day, cognizance was taken against six named accused persons but not against the petitioner herein. Learned counsel for the petitioner submits that an application for discharge under section 227 of the Cr.P.C. was filed which was dismissed on 1.12.2022 and by the order impugned, correction in the order taking cognizance dated 9.7.2018 was passed incorporating the name of the petitioner therein. Further by the same order, charges were framed against the petitioner under section 30(a) and 41 of the Excise Act. It is submitted by learned counsel for the petitioner that the order impugned is illegal and not sustainable for the reason that the petitioner was

neither present in the Court nor the charges were read out and explained. In support of his contentions, learned counsel refers to paragraph nos.4 and 5 of the interlocutory application (I.A. no.1 of 2024) filed on behalf of the petitioner.

5. The application is opposed by learned APP for the State. It is submitted by learned counsel appearing for the State that there is no illegality in the order impugned dated 1.12.2022 framing charge against the petitioner. The order clearly spells out that charge was read over and explained to all the accused persons in Hindi to which they pleaded not guilty and claimed to be tried. Accordingly charge was framed under sections 30(a) and 41 of the Excise Act.

6. Having heard learned counsel for the parties and having perused the material on record, it transpires that an F.I.R. being Vishanpur P.S. Case no.84 of 2017 was registered on 12.11.2017 against the petitioner under sections 30(a) and 41 of the Excise Act. After investigation, chargesheet no.29 of 2018 was submitted on 20.5.2018 under the same sections. By order dated 9.7.2018, cognizance of the offence under section 30(a) and 41 of the Excise Act was taken. While summons was issued against the accused persons named therein, however as a result of a clerical mistake, the name of the petitioner was left out. The

said error was corrected by order impugned dated 1.12.2022. It further transpires that by the order dated 1.12.2022, charge was framed under sections 30(a) and 41 of the Excise Act, was read over to all the seven accused persons in Hindi to which they pleaded not guilty and claimed to be tried. The petitioner was amongst the seven accused.

7. So far as the contention of learned counsel for the petitioner that the petitioner was not present is concerned, it may be stated here that no evidence nor any material has been brought on record to substantiate the said contention.

8. The Court finds no illegality in the order impugned dated 1.12.2022 whereby charge was framed against the petitioner under sections 30(a) and 41 of the Excise Act and there is no merit in the instant application.

9. The application is dismissed.

(Partha Sarthy, J)

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