

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.899 of 2019**

Arising Out of PS. Case No.-144 Year-2017 Thana- GOVERNMENT OFFICIAL COMP.
District- Samastipur

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Ram Japo Mukhiya @ Ramjapo Mo. Son Of Late Lachho Mukhiya Resident
Of Village- Marthuadih, P.S.- Police Station- Bithan, District- Samastipur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Choudhary Shyam Nandan
For the Respondent/s : Mr. Bipin Kumar

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

6 11-11-2024 Heard learned counsel for the appellant and learned
Special P.P. for the State.

2. The present appeal has been preferred against the judgement of conviction and sentence dated 28.01.2019 passed in Excise Case No. 144 of 2017, Tr. No.110 of 2017 by the 3rd Additional Sessions Judge-cum-Special Judge, Excise Act, Samastipur by which the appellant has been convicted under Section 37(b) of the Bihar Prohibition and Excise Act, 2016 and sentenced to fine of Rs. 50,000/- and in default of fine, the convict appellant has to undergo simple imprisonment of 3 months.

3. As per the prosecution case, the Excise Officials and Police personnel raided and searched the house and the shop of the appellant but no illegal material was found. On the other hand, the appellant was found in drunken condition and in the



breath analyzer test, it was confirmed that the appellant had consumed alcohol.

4. Learned counsel for the appellant has submitted that all the prosecution witnesses have given contradictory statements in their depositions.

5. Learned counsel for the appellant has relied upon a judgement of the Hon'ble Supreme Court in the case of ***Bachubhai Hassanalli Karyani Vs. State of Maharashtra*** reported in ***1971(3) SCC 930*** and has submitted that the consumption of alcohol can only be ascertained by way of blood and urine test of a person suspected to have consumed alcohol.

6. Learned counsel for the appellant has also relied upon a judgment of this Court in the case of ***Manju Devi vs. The State of Bihar & Ors. (CWJC No. 2590 of 2022)*** and has submitted that breath analyzer report is not a conclusive proof of consuming liquor by a person.

7. Learned counsel for the appellant next submits that in the present case, the blood and urine samples of the appellant was never taken and therefore, the appellant cannot be convicted and sentenced only on the basis of the breath analyzer report.

8. Learned Special P.P. for the State has opposed the application of the appellant.



9. I have heard and considered the submissions of the parties.

10. From the facts of the case, it is clear that the appellant has been held to have committed the offence only on the basis of a breath analyzer test. The blood sample of the appellant was not taken and there is no conclusive proof that the appellant has been found to be using illicit liquor.

11. In these circumstances, the conviction of the appellant cannot be held to be legal. Once it is held that the appellant was not found to have consumed illicit liquor, then the conviction and sentence of the appellant cannot be sustained.

12. Accordingly, this appeal is allowed, and the impugned judgment and order of conviction and sentence dated 28.01.2019 passed in Excise Case No. 144 of 2017, Tr. No. 110 of 2017 by the 3rd Additional Sessions Judge-cum-Special Judge, Excise Act, Samastipur is hereby set aside. If the appellant is in custody then he is directed to be released forthwith, if he is not wanted in any other case.

(Sandeep Kumar, J)

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