

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.668 of 2019**

Arising Out of PS. Case No.-210 Year-2018 Thana- GOVERNMENT OFFICIAL COMP.
District- Rohtas

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TAPESHWAR PASWAN Son of Late Tengari Paswan Resident of Village-
Takiya, Ward No.3, P.S.- Sasaram (Model), District- Rohtas.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Ramchandra Singh, Adv

For the Respondent/s : Mr. Syed Ashfaque Ahmad, APP

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

5 24-10-2024 Heard the parties.

2. The present appeal has been preferred against the judgment of conviction and order of sentence dated 31.01.2019 passed by the ADJ-II cum Special Judge, Excise, Rohtas, Sasaram in Excise Case No. 210 of 2018 in whereunder the appellant has been convicted under Section 37(b) of the Bihar Prohibition and Excise Act 2016 and has been sentenced to pay a fine of Rs. 50,000/- and in default thereof, the appellant shall undergo rigorous imprisonment for a term of three months.

3. As per the prosecution case, the police arrested the petitioner in drunken condition and on the test through breath analyzer machine, alcohol BAC 59.4 mg/100 ml was found.



4. The charge was framed under Section 37(b), Excise Act against the accused/appellant on 18.06.2018.

5. Learned counsel for the appellant has 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 breathe analyzer report is not a conclusive proof of consuming liquor by a person. The appellant has also relied upon a judgment 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 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.

7. Learned Special P.P. has opposed the application of the appellant.

8. I have considered the submission of the parties. 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 breathe 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.

9. 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.

10. Accordingly, this appeal is allowed and the judgment of conviction and order of sentence dated 31.01.2019 passed by the ADJ-II cum Special Judge, Excise, Rohtas, Sasaram in Excise Case No. 210 of 2018 is hereby set aside.

(Sandeep Kumar, J)

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