

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.50009 of 2018

Arising Out of PS. Case No.-67 Year-2017 Thana- SAKRI District- Madhubani

Gunjan Kumar @ Gunjan Jha @ Gyanendra Kumar Jha Son of Ramakant Jha
Resident of Ward No. 13, Brahmpur, P.S. Sakri, District- Darbhanga, In F.I.R.,
Resident of Village- Dahaura, Police Station- Manigachhi, District-
Darbhanga.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Rohit Kumar, Advocate Mr. Raj Kumar, Advocate Mr. Rajnish Kumar, Advocate
For the Opposite Party/s	:	Mr. Manoj Kumar, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

3 08-05-2024 In connection with Sakari P.S. Case No.67 of 2017, police submitted charge sheet against four accused persons under Sections 272, 273 of the I.P.C. and Sections 30(1), 36, 38(2) of the Bihar Prohibition and Excise Act. Though, the above mentioned police station case was registered against the present petition, the Investigating Officer failed to collect any incriminating evidence against the petitioner, so he along with two other accused persons were not sent up for trial as no case was made out against the petitioner and the said two other persons.

2. However, at the time of consideration of charge the learned Additional Sessions Judge-II and Special Judge under



the Excise Act, Madhubani took cognizance of offence under the present petitioner on the basis of the materials in case diary and held that the petitioner was also liable to face trial in connection with Trial No.1854 of 2017.

3. The petitioner has challenged the said order of taking cognizance by the learned Trial Judge on the basis of the case diary under Section 482 of the Cr.P.C.

4. It is submitted by the learned advocate for the petitioner that according to the prosecution case, police conducted raid on the basis of a secret information on 21.06.2017 and recovered huge quantity of foreign liquor from the house of one Ram Prasad Thakur of Village-Sagarpur.

5. At the time of raid no person was arrested. Subsequently, during investigation complicity against four accused persons were found and they were charge sheeted.

6. It is the case of the prosecution that at the time of raid the name of the present petitioner was revealed to the complainant as one of the accused involved in concealment of foreign liquor, the complainant corroborated the said statement before the Investigating Officer as made out in the written complaint. Other witnesses who stated the name of the present petitioner were S.H.O. of the concerned police station, who was



not present at the time of raid and other two persons were members of raiding party. Apart from them no other person who were cited as witnesses in the aforesaid case stated the name of the present petitioner and the nature of involvement in the alleged offence. From the complaint it is found that the name of the present petitioner was disclosed on the basis of the statement made by the co-accused persons, whose statements are not admissible in evidence.

7. Since, there is absolutely no material in the case diary against the present petitioner, the learned Trial Judge acted illegally and with material irregularity in taking cognizance of offence against the present petitioner, who was not sent up by the Investigating Officer as an accused.

8. In view of the such matter, the impugned order is liable to be set aside. Accordingly, the order dated 23.09.2017 is quashed and set aside as against the present petitioner, namely, Gunjan Kumar @ Gunjan Jha.

9. The instant application is thus, disposed of.

(Bibek Chaudhuri, J)

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