

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.9470 of 2021**

Arising Out of PS. Case No.-252 Year-2017 Thana- LAKHISARAI District- Lakhisarai

Kanhaiya Prasad Gupta @ Kanhaiya Kumar Son of Bhagwan Das Gupta  
Resident of Village - Shivpuri, Ward No.- 16, P.S.- Kawaiya, District -  
Lakhisarai.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

**Appearance :**

|                          |   |                                                                                                                |
|--------------------------|---|----------------------------------------------------------------------------------------------------------------|
| For the Petitioner/s     | : | Mr. Ashok Kumar Choudhary, Sr. Advocate<br>Mr. Shailesh Kumar Singh, Advocate<br>Mr. Akashansh Ankit, Advocate |
| For the Opposite Party/s | : | Mr. Suresh Prasad Singh, APP                                                                                   |

**CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR**  
**ORAL JUDGMENT**

**Date : 20-09-2024**

Heard Mr. Ashok Kumar Choudhary, learned Senior Advocate for the petitioner and the learned Additional Public Prosecutor for the State.

2. The petitioner has invoked the inherent jurisdiction of this Court by filing the present quashing application under Section 482 of the Cr.P.C, assailing the order dated 31.01.2020 passed by the learned Additional District and Sessions Judge-II-cum-Special Judge, Lakhisarai, in connection with Lakhisarai P.S. Case No. 252 of 2017, whereby the prayer of the petitioner for discharge has been rejected.

3. The short facts which led to the filing of the present application begins from filing of the written report, which led to



the institution of the FIR, alleging therein that while the informant and other police personnels were on patrolling duty; received an information that one *Biru Modi* (co-accused), who had been in judicial custody in connection with trade of illicit liquor, has again started his business in a shop of *Kanhaiya Prasad Gupta* (petitioner). On the aforesaid information, the police conducted raid and apprehended co-accused *Biru Modi* and put force upon him to open his shop. On search, from the shop eight bottles of Indian made foreign liquor, each containing 750 ml, were seized.

4. Learned Senior Advocate for the petitioner referring to the FIR primarily submitted that the petitioner is an Ayurvedic Doctor, practicing at different places. Even if the allegation taken to be true, it only reveals that the co-accused *Biru Modi* was found indulge in sale of illicit liquor and thus apprehended by the police. The illicit liquor was recovered from his shop of which the petitioner happens to be the landlord. In support of the aforesaid contention, a copy of the notarized rent agreement has been placed on record vide Annexure-2 to the application duly executed by the petitioner in favour of *Biru Modi* dated 8<sup>th</sup> of July, 2016 for a period of eleven months. Drawing the terms and conditions of the agreement, it is further contended that the



agreement made it clear that if the tenant shall be found indulge in any illegal activities or keeping any illicit/illegal goods/materials, the landlord shall not be responsible for the same.

5. Learned Senior Advocate has further taken this Court to the penal provision of the Bihar Prohibition and Excise Act, 2016 under which the charges have been framed. Referring to Section 30 (a) and 32 (C) of the Bihar Prohibition and Excise Act, 2016 it is vehemently contended that even if the allegation taken to be true in its entirety do not constitute any offence much less against the petitioner. Further attention has been drawn to the impugned order dated 31.01.2020, whereby the application for discharge of the petitioner has been rejected only on the ground that the petitioner being a landlord, he must be conscious and keep vigil over the activities of his tenant. Grounds set forth in the impugned order for framing of the charge and rejecting the discharge petition is not sustainable in any view of the matter, is the contention of learned Senior Advocate.

6. Reliance has also been placed on a decision of the Division Bench of this Court passed in CWJC No. 9207 of 2017, wherein, the Division Bench after taking note of the fact that no



material has been placed on record to establish that the petitioner/lessor was involved in the alleged offences under the Excise Act, except to the extent that he is the owner of the subject matter of premises, has set aside the impugned order/action of confiscation proceedings.

7. On the other hand, learned Advocate for the State taking this Court to the averments made in the counter affidavit has contended that the petitioner is said to be the landlord of the shop, from where illicit liquor was recovered. During the course of investigation, the witnesses has supported the allegation that the shop belongs to the petitioner where the illicit liquor was kept and, as such, his complicity cannot be ruled out.

8. This Court has given anxious consideration to the submissions advanced on behalf of the learned Advocate for the respective parties. Trite it is that at the time of framing of the charge, the Court has to consider whether offence has been committed by the particular accused or not. Framing of charge is a sacrosanct act, which touches the fundamental right of a person, as such, the same can not be done in a mechanical manner, without application of judicial mind.

9. From the materials available on record, *prima facie*, it is admitted fact that save and except the petitioner being a



landlord of the shop, in question, from where the recovery has been made, there is no material suggesting the complicity of the petitioner in crime. The offence, under Section 30 (a) of the Bihar Prohibition and Excise Act, 2016 in which the charge have been framed, only prescribes “*Whoever, in contravention of any provision of this Act or of any rule, regulation, order made, notification issued thereunder, or without a valid license, permit or pass issued under this Act, or in breach of any condition of any license, permit or pass renewed or authorisation granted thereunder – (a)Manufactures, possesses, buys, sells, distributes, collects, stores, bottles, imports, exports, transports, removes or cultivates any intoxicant, liquor, hemp;*”. Even for the purposes of constituting an offence under this Section by taking the plea of possession, the element of knowledge is *sine qua non*. There is no material on record which suggest that the petitioner was conscious and knowing this fact that co-accused person has kept illicit wine in his shop. In absence of the knowledge of possession or being conscious of this fact, in the opinion of this Court, no offence much less under Section 30 (a) is made out against the petitioner.

10. It would be worth to note that ‘possession’ means conscious and exclusive possession. The Hon’ble Supreme



Court in case of *Madan Lal and Anr. Vs. State of Himachal Pradesh, (2003) 7 SCC 465* while defining the conscious possession in relation to an offence under the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as Act, 1985) has held that unless the possession was coupled with the requisite mental element i.e. conscious possession and not mere custody without awareness of the nature of such possession, Section 20 of the Act, 1985 is not attracted. The expression “possession” is a polymorphous term which assumes different colours in different contexts. It may carry different meanings in contextually different backgrounds. The word “conscious” means awareness about a particular fact. It is a state of mind which is deliberate or intended.

11. What amounts to “conscious possession” was also considered in *Dharampal Singh v. State of Punjab, (2010) 9 SCC 608*, where it was held that the knowledge of possession of contraband has to be gleaned from the facts and circumstances of a case. In *Mohan Lal v. State of Rajasthan, (2015) 6 SCC 222*, the Apex Court also observed that the term “possession” could mean physical possession with animus; custody over the prohibited substances with animus; exercise of dominion and control as a result of concealment; or personal knowledge as to



the existence of the contraband and the intention based on this knowledge.

12. So far Section 32(3) is concerned, which reads as follows:

*“32(3). Where any equipment, machinery, animal, vessel, cart, vehicle, conveyance or any premises are used in the commission of an offence under this Act, and are liable to confiscation and/or liable to be sealed, the owner or occupier thereof would need to account satisfactorily, and in the absence of a satisfactory explanation the presumption that accused person committed the offence shall arise, unless proved otherwise.”*

13. The aforesaid provision clearly says with regard to the presumption as to commission of offence in certain case. Even fastening the charges under Section 30 (3) of the Act, 2016 against the petitioner, the presumption would be attracted only in absence of satisfactory explanation. In the case in hand, the petitioner has made out a case based upon the rent agreement, which clearly suggest that the shop, in question, was rented to co-accused *Biru Modi*, and from whose shop recovery has been made, which fact has been found true in course of investigation.

14. Even in order to attract Section 38 (2) of the Excise Act, which penal provision has now no more in existence in view of the Amendment Act, 8 of 2018, with effect from 30.07.2018, is based upon knowledge about the possession,



which element is lacking herein the present case.

15. This Court also finds that in order to establish the case under which charges have been framed, there must be some materials placed on record or any incriminating material ought to be collected during the course of investigation, suggesting the involvement of the accused, which would be sufficient to frame the charge.

16. In view of the aforesaid facts and on being found that the materials available on record is not sufficient to constitute offence under the aforenoted penal provisions, much less against the petitioner, the continuation of the proceeding against the petitioner, in the opinion of this Court, is an abuse of the process of the Court and accordingly, the proceeding arising out of Lakhisarai P.S. Case No. 252 of 2017 as also the order framing charge *qua* the petitioner stands quashed for the ends of justice.

17. The quashing application stands allowed.

**(Harish Kumar, J)**

shivank/-

|                   |            |
|-------------------|------------|
| AFR/NAFR          | NAFR       |
| CAV DATE          | NA         |
| Uploading Date    | 25.09.2024 |
| Transmission Date | 25.09.2024 |

