

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.468 of 2019

Arising Out of PS. Case No.-148 Year-2016 Thana- PATLIPUTRA District- Patna

Vinay Varma Son of Late Singheshwar Prasad Verma, Resident of Village- D.K. Shikarpur, P.S.- Shikarpur, District- West Champaran. Presently residing at House No. 321 A, Road No. 11-A, Patliputra Colony, P.S.- Patliputra, District- Patna.

... .. Petitioner

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Petitioner/s	:	Mr. Shashank Chandra, Advocate Mr. Vatsal Verma, Advocate
For the Respondent/s	:	Mr. Ramchandra Singh, APP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

4 08-02-2024 Heard learned counsel for the petitioner and learned counsel for the State.

2. Petitioner in the present case is seeking setting aside of the order dated 04.01.2019 passed by the learned Special Judge (Excise) Patna in Special Case No. 729 of 2017, arising out of Patliputra P.S. Case No. 148 of 2016 under Section 201 of the Indian Penal Code (in short 'IPC') and Sections 47(A) and 53(B) of the Bihar Excise (Amendment) Act, 2016 (in short 'Excise Act'). By the impugned order, the learned court has directed the investigating agency to reinvestigate the case.

3. Learned counsel for the petitioner submits that



Patliputra P.S. Case No. 148 of 2016 was registered on the basis of a news published in various daily newspapers on 26.04.2016. The news were published on the basis of a sting operation said to have been conducted by a private channel wherein a Member of Legislative Assembly, namely Vinay Varma (petitioner), was shown saying that he has brands of various liquors, further that he was shown giving offer to the team carrying out sting operation for drinking. It is alleged that when he was asked by the sting team, he stated that how can he throw when he has. It is further alleged that the petitioner said to have claimed that he has many brands in his village like Black Label, Black Dog. He allegedly invited the team for drinking at his village saying that if you want to drink then I can offer you. The petitioner allegedly said that liquor is available both at Patna and Narkatiaganj. It is further stated in the FIR that based on the said report, the officials of the Excise Department, Patna carried out a raid at the house of the petitioner on 26.04.2016 in between 8:00 am to 11:00 am but nothing was recovered from the premises. The informant alleged that the foreign liquors appeared to have been removed.

4. Learned counsel for the petitioner submits that from the FIR itself it is clear that the Excise Department officials



raided the house of the petitioner in between 8:00 am to 11:00 am on 26.04.2016 without any authority of law. There was no order of a competent court allowing the Excise Department officials to conduct raid in the house of the petitioner. Despite this, when the raid was conducted no liquor was recovered, therefore no offence under the relevant provisions of the IPC or the Excise Act could be even *prima-facie* made out.

5. Learned counsel further submits that the informant acted on the basis of the so-called sting operation, without ascertaining the veracity of the contents of the sting operation. It is stated that the petitioner and his family are supporters of Congress Party from the very beginning and the petitioner was Mukhiya of Shikarpur Panchayat, West Champaran for about twenty two years and was Block Pramukh of Narkatiaganj Block, West Champaran from 2001 to 2006. In 2015, he contested from Narkatiaganj Assembly Constituency on Congress ticket and was declared elected. He was a teetotaler, a vegetarian and has never touched any sort of liquor throughout his life.

6. Learned counsel further submits that Sections 47(A) and 53(B) of the Excise Act would not at all be attracted in the nature of the allegations made in the FIR. It is stated that



the Police after a threadbare investigation submitted a closure report *vide* Final Report No. 316 of 2016 dated 19.09.2016 under Section 173(2) of the Code of Criminal Procedure (in short 'Cr.P.C.') The investigating agency reached to a conclusion that there were lack of evidence to proceed further with the case.

7. The grievance of the petitioner is that on submission of the closure report, the learned Special Judge (Excise), Patna issued notice to the informant. Till this stage, there was no difficulty as before acceptance of the closure report, a notice to the informant was required. The learned Special Judge could have differed with the police report but in this case the learned Special Judge did not differ with the police report, there was no protest petition also but on 04.01.2019, the learned Special Judge rejected the closure report and by exceeding his jurisdiction under Section 156(3) Cr.P.C. directed the S.H.O. of Patliputra Police Station to hold a reinvestigation into the matter and submit a final report within a period of three months.

8. Learned counsel for the petitioner submits that on a bare perusal of the impugned order, this Court would find that the learned Special Judge has acted like a supervisory authority



and pointed out several faults with the investigation and also issued several directions to the Investigating Officer to investigate the case in a particular manner. Learned counsel relies upon the judgment of the Hon'ble Supreme Court in the case of **Vinay Tyagi vs. Irshad Ali @ Deepak & Others** reported in **(2013) 5 SCC 762** to submit that the learned Magistrate has no power to direct fresh/de novo investigation/reinvestigation. Such power is vested with only the higher judiciary in exercise of the extraordinary or inherent jurisdiction.

9. Learned counsel has further relied upon the judgment of the Hon'ble Supreme Court in the case of **Chandra Babu @ Moses vs. State through Inspector of Police & Others** reported in **(2015) 8 SCC 774**. It is submitted that in the case of **Chandra Babu (supra)**, the Hon'ble Supreme Court has reiterated the legal position that a Magistrate can disagree with the police report and take cognizance and issue process and summons to the accused. Thus, the Magistrate has the jurisdiction to ignore the opinion of the Investigating Officer, however, a Magistrate cannot direct reinvestigation and cannot suo-moto direct further investigation.

10. Learned counsel for the State has opposed this



application as according to him, the learned Special Judge (Excise) has passed the impugned order in exercise of his power under Section 156(3) Cr.P.C. and no fault may be found with the same.

11. Having heard learned counsel for the petitioner and the State as also on perusal of the records, this Court is of the considered opinion that the learned Special Judge (Excise) has erred in issuing a direction to the Investigating Officer (in short 'I.O.') to reinvestigate the case in a particular manner. The legal position is well settled by several judicial pronouncements that after submission of a Police report by the I.O., the scope and ambit of the power of the learned Magistrate/Special Judge would not be extended to the extent of directing a reinvestigation. The learned Magistrate/Special Judge could have disagreed with the Police report if sufficient materials would have been found in the case diary to take a different view but the learned Magistrate/Special Judge had no authority of law to direct reinvestigation. At this stage, the learned Magistrate/Special Judge was required to exercise his powers with all circumspection and care. In this case, the learned Special Judge (Excise) has usurped a power which is not vested in him. The Hon'ble Supreme Court has in the case of **Vinay**



Tyagi (*supra*) observed in paragraph ‘37’ as follows:-

“... In some judgments of this Court, a view has been advanced, [amongst others in *Reeta Nag v. State of W.B.*²² *Ram Naresh Prasad v. State of Jharkhand*²³ and *Randhir Singh Rana v. State (Delhi Admn.)*²⁴]that a Magistrate cannot suo motu direct further investigation under Section 173(8) of the Code or direct reinvestigation into a case on account of the bar contained in Section 167(2) of the Code, and that a Magistrate could direct filing of a charge-sheet where the police submits a report that no case had been made out for sending up an accused for trial. The gist of the view taken in these cases is that a Magistrate cannot direct reinvestigation and cannot suo motu direct further investigation..”

12. The aforesaid view has been reiterated in the case of **Chandra Babu (*supra*)**.

13. This Court therefore finds that the impugned order is bad in law and is liable to be set aside. Accordingly, the order dated 04.01.2019 passed by learned Special Judge (Excise), Patna in Special Case No. 729 of 2017 is hereby set aside. The learned court shall now proceed to pass an appropriate order on the final Police report within a period of two months from the date of receipt/production of a copy of this order.

14. This application stands allowed

(Rajeev Ranjan Prasad, J)

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22. (2009) 9 SCC 129 : (2009) 3 SCC (Cri) 1051
23. (2009) 11 SCC 299 : (2009) 3 SCC (Cri) 1336. **Ed.:** Ram Naresh case does not seem to indicate that the Magistrate cannot suo motu direct further investigation; rather it seems to indicate that the Magistrate in fact can do so.
24. (1997) 1 SCC 361

