

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.25396 of 2023

Arising Out of PS. Case No.-510 Year-2021 Thana- BHAGALPUR KOTWALI District-
Bhagalpur

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1. SANTOSH KUMAR @ SANTOSH KUMAR MISHRA @ SANTOSH KUMAR JHA Son of Jakh Lal Mishra Resident of Mohalla-Tilkamanjhi Hatia Chowk, P.S.-Tilkamanjhi, District-Bhagalpur
 2. RANJAN KUMAR @ RANJAN KUMAR JHA Son of Subhesha Nand Jha Resident of Mohalla- Bhikhanpur Anand Bag, P.S.-Ishakchak, District-Bhagalpur

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Ashok Kumar Jha
For the Opposite Party/s : Mr.Satya Nand Shukla

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

5 22-07-2024 Heard learned counsel for the petitioners and learned
APP for the State.

2. This application has been filed for quashing of the order dated 02.12.2022 by which learned court below has taken cognizance against the petitioners passed in Special Excise Case No. 913/2021, arising out of Kotwali (Jogsar) P.S. Case No. 510/2021, registered for the offence under section 37(c) of the Bihar Prohibition and Excise Act.

3. As per prosecution case, while the informant was on patrolling duty, he saw some persons were creating hulla in drunken condition who were caught by the police and through



breathe analyzer test the consumption of petitioner no. 1 was found 121.0 mg/100 ml. and consumption of petitioner no. 2 was found 82.6 mg./100 ml. and cognizance has been taken against both the petitioners.

4. When the informant entered into the campus and found no any Ho-Hulla and as such at best the case comes under the purview of Section 37(A) & (b) and the learned Special Court while granting bail found the case *prima facie* u/s 37(b) as is mentioned in Order dated 08/08/21.

5. The learned Special Judge without elaborating the materials, F.I.R., in mechanical manner took cognizance u/s 37(c) of the Bihar Prohibition and Excise Act. The petitioners were taken into custody at 21.45 P.M. and the presence of alcohol was found in the blood of these petitioners after two hours of Police custody in the breath analyzer test. The percentage of consumption seems to be unauthentic.

6. The petitioners were implicated falsely only due to hot talk with the S.H.O. prior to two days of occurrence.

7. Learned counsel for the petitioners relying on the judgment of Hon'ble Supreme Court in the case of ***Bachubhai Hassanalli Karyani vs State Of Maharashtra 1971 (3) SCC 930*** and a recent judgment of this Court in the case of ***Manju***



Devi vs. State of Bihar & Ors. in CWJC No. 2590 of 2022, has submitted that the petitioners cannot be prosecuted under the Excise Act on the basis of his Breathe Analyzer Test as the same is not reliable. He has submitted that breathe analyzer is not a conclusive proof of consuming liquor by a person.

8. Learned APP has opposed the case and has submitted that since the petitioners were found in drunken conditions, their prosecution cannot be quashed at this stage.

9. This Court in the case of ***Manju Devi vs. State of Bihar*** (supra) in paragraph 7 held as follows:

“In Bachubhai Hassanalli Karyani vs. State of Maharashtra, reported in 1971 (3) SCC 930, the Hon'ble Supreme Court held that no conclusion with regard to consumption of alcohol by a person can be made on the facts that the appellant's breathe was smelling of alcohol, that his gait was unsteady, that his speech was incoherent and that his pupils were dilated. Consumption of alcohol can only be ascertained by way of blood and urine test by a person suspected to have consumed alcohol.”

10. In the present case also, merely on the basis of the breathe analyzer report, the petitioners are being



prosecuted, there is no allegation against the petitioners that at the time of arrest, the gait of the petitioners were unsteady, they were speaking incoherently or that their pupils were dilated.

11. Considering the law laid down by Hon'ble Surpeme Court in the case of *Bachubhai Hassanalli Karyani vs. State of Maharasthra* (supra) and also in the case of *Manju Devi vs. State of Bihar* (supra), this application is allowed.

12. The order dated the order dated 02.12.2022 by which learned court below has taken cognizance against the petitioners passed in Special Excise Case No. 913/2021, arising out of Kotwali (Jogsar) P.S. Case No. 510/2021, is hereby quashed.

(Sandeep Kumar, J)

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