

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.43223 of 2016

Arising Out of PS. Case No.-356 Year-2014 Thana- BUXAR District- Buxar

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1. Guddu Sah @ Guddu Prasad Sah son of Late Thakur Sah resident of Village Karahasi, P.S.- Buxar T, District- Buxar.
 2. Sikandar Sah son of Ganpat Sah resident of Village- Sandesh P.S.- Sandesh, District- Bhojpur.
 3. Dayanand Prasad Yadav son of Late Bindeshwar Rai resident of Mohalla- Arrah, P.S.- Nawadah, District- Bhojpur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ganga Prasad Bimal, Advocate
For the Opposite Party/s : Mr. Bharat Lal, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 25-04-2024

Heard learned counsel for the petitioners
and learned counsel for the respondent.

2. The present quashing petition has been preferred to quash the order dated 18.01.2016 passed in Buxar (T) P.S. Case No. 356 of 2014 (G.R. No. 2008 of 2014), where learned Chief Judicial Magistrate, Buxar took cognizance for the offence punishable under Section 47 (a) of the Excise Act against the petitioners.

3. At the outset, background of earlier



proceedings speaks that petitioners have not moved to this Hon'ble Court earlier for quashing of the impugned order dated 18.01.2016 passed by the Court of the learned Chief Judicial Magistrate, Buxar in Buxar (T) P.S. Case No. 356 of 2014, G.R. No. 2008 of 2014. However, the petitioners have filed Cr. W.J.C. No. 431 of 2015 for quashing the FIR registered vide Town P.S. Case No. 356 of 2014, which was disposed of vide order dated 02.05.2016, by one of the Learned Co-ordinate Bench with a liberty to the petitioners to challenge the order taking cognizance of the offence by filing another appropriate application. Thereafter, the petitioners filed a criminal miscellaneous quashing application with a similar prayer as stated above vide token no. 39026 of 2016 in which certain defects were pointed out by the stamp reporting office with a deadline to re-file the aforesaid matter after removal of defects. The petitioners could not adhere to the deadline due to certain practical problems and defects could not be



removed within the deadline. Hence, the present criminal miscellaneous quashing application.

4. That the prosecution case instituted on the basis of self-statement of Sri Brajnandan Singh, Assistant Sub-Inspector of Police, Town P.S. Buxar that while he was on patrolling duty, he received a secret information that illegal and fake foreign liquor is being sold near Pandey Patti Railway Crossing. For verification of the aforesaid information, he reached the place of occurrence at around 8:15 AM where he saw a sign board of a foreign liquor shop but neither the licence number nor the name of the licensee was displayed. Three persons were standing at the shop to purchase liquor. The salesman namely Dayanand Prasad Yadav was asked to produce all the relevant documents in relation to the shop but he did not produce any document (license) in relation to the shop. He disclosed the name of the shop owner as Guddu Sah (petitioner) and alleged that illicit foreign liquor is being sold by him.



On the basis of the aforesaid allegations Buxar (Town) P.S. Case No. 356 of 2014 registered under Section 272 of the IPC and Section 47 (A) of the Bihar Excise Act has been registered against the petitioners.

5. Learned counsel for the petitioner submitted that in the background of aforesaid allegation the case was registered as Buxar Town P.S. Case No. 356 of 2014 on 02.08.2014, where charge-sheet was submitted on 30.04.2015 by ASI Parshuram Singh at Buxar Town Police Station. It is submitted that police officer of the rank of ASI is not empowered to investigate excise case in view of Section 87 of the Excise Act and as such the entire investigations and cognizance appears bad in eyes of law in terms of Section 47 of the Excise Act, where particular officials are empowered to investigate the matter related with Excise. In support of his submissions learned counsel relied upon the legal report as reported in the matter of **Saheb Kumar @ Sanjay Kumar Vs. State of Bihar**



as reported in **2015 (4) PLJR 509**. Learned counsel also relied upon the legal reports of the Hon'ble High Court in the matter of **Cr. Misc. No. 3194 of 1988** order dated 06.09.1991 & **Cr. Misc. No. 21911 of 2006** order dated 29.11.2007.

6. Learned APP for the State, opposes the present application.

7. It would be apposite to reproduce the paragraph no. 102 of the Apex Court decision in the case of **State of Haryana and Others vs. Bhajan Lal and Others reported in 1992 Supp (1) Supreme Court Cases 335**, which reads as under:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be



possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first informant report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of nay offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent persons can ever reach a just



conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

8. In view of aforesaid factual and legal discussions, it appears that investigation in Buxar Town P.S. Case No. 356 of 2014 was conducted by ASI having no jurisdiction to investigate in this type of matter in view of Section 87 of the Excise Act. Accordingly, impugned order of cognizance dated 18.01.2016 which was taken on the basis of charge-sheet submitted by ASI Parshuram Singh at Buxar Town Police Station by taking note of guideline no. 6 of



Bhajan Lal Case (Supra) with all its consequential proceedings, *qua*, all above named petitioners arising thereof as passed in Buxar (T) P.S. Case No. 356 of 2014 (G.R. No. 2008 of 2014), pending before learned learned Chief Judicial Magistrate, Buxar is hereby quashed and set aside.

9. The application stands allowed.

10. Let a copy of this judgment be sent to learned Trial Court, immediately.

(Chandra Shekhar Jha, J.)

S.Tripathi/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	30.04.2024
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