

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.42813 of 2022

Arising Out of PS. Case No.-66 Year-2019 Thana- MANIGACHI District- Darbhanga

SHANKAR JHA @ SHANKAR KUMAR JHA S/o Pandit Kulanand Jha R/o
village- Lahta, P.O.- Lahta, P.S.- Manigachi, District- Darbhanga

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Durga Nand Jha, Adv.

For the Opposite Party/s : Mr. Chandra Bhushan Prasad, APP

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

3 15-01-2024 1. Heard the learned counsel for the petitioner and the
learned APP for the State.

2. The learned APP Mr. Chandra Bhushan Prasad submits that in compliance of the order dated 07.11.2023, a counter affidavit duly sworn by the Senior Superintendent of Police, Darbhanga has been filed. The learned APP next submits that in the counter affidavit, it has been specifically pleaded that charge sheet against the petitioner has been submitted on 05.01.2024, bearing Charge Sheet No.01/2024. It is next submitted that Rajan Kumar was the Investigating Officer of the case but he kept the matter pending and in the meantime was transferred to Samastipur, as such, the S.D.P.O., Benipur has requested the Senior Superintendent of Police, Darbhanga for taking appropriate action against Rajan Kumar by his letter



dated 09.01.2024 (Annexure-D) to the counter affidavit.

3. The learned counsel for the petitioner at this stage submits that the petitioner in the present quashing application has challenged the order of cognizance on the ground that while the investigation was pending against the petitioner still cognizance came to be taken against the petitioner. It is further submitted that in view of the pleadings made in the counter affidavit, it is clear that charge sheet came to be submitted on 05.01.2024, whereas order of cognizance is dated 28.05.2022, which amply demonstrates that the learned Special Judge, Excise Act-II, Darbhanga in Manigachhi P.S. Case No.66/2019, G.O. No. 383/2019 mechanically took cognizance of the offence under Section 30(a) of the Bihar Prohibition and Excise Act, 2016. The learned counsel for the petitioner next submits that the police might have chargesheeted the petitioner or could have submitted a final form in both the events, the Magistrate was empowered to take cognizance provided there was material on record to connect the petitioner with the offence but when the investigation was continuing against the petitioner where was the occasion for the Magistrate to take cognizance.

4. Considering the submissions made by the learned counsel for the petitioner, the order dated 28.05.2022 passed by



the learned Special Judge, Excise Act-II, Darbhanga in Manigachhi P.S. Case No.66/2019, G.O. No. 383/2019, whereby cognizance of offence under Section 30(a) of the Bihar Prohibition and Excise Act, 2016 has been taken, is hereby quashed. However, the learned trial court shall be at liberty to proceed against the petitioner in terms of the Chargesheet No.01/2024 dated 05.01.2024 in accordance with law.

5. It is made clear that the order taking cognizance has been quashed only with respect to the petitioner herein.

6. The counter affidavit filed by the Senior Superintendent of Police, Darbhanga is taken on record.

(Satyavrat Verma, J)

amit/-

U		T	
---	--	---	--

