IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.44784 of 2023

Arising Out of PS. Case No.-26 Year-2017 Thana- PUSA District- Samastipur

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Chahat Beverage Centre through its Sales Person Somesh Chaudhary @ Atul Krishna @ Sumesh Choudhary son of Subhas Chaudhary Village- Pusa Bazar, Ps- Pusa Dist- Samastipur.

... ... Petitioner

Versus

The State of Bihar

... ... Opposite Party

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Appearance :

For the Petitioner	:	Mr. Rohit Raj, Advocate
For the Opposite Party	:	Mr. Sanjay Kumar Tiwary, APP

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

ORAL JUDGMENT

Date : 05-09-2024

Heard learned counsel for the petitioner and learned APP for the State.

2. This application has been filed for quashing the F.I.R. vide Pusa P.S Case No.26 of 2017 dated 10.03.2017 registered for the offences under sections 420 & 120-B of Indian Penal Code and under section 35(e) of Bihar Prohibition & Excise Act, 2016.

3. The present F.I.R. has been lodged by one Arvind Prasad, Assistant Inspector, Excise Department, Samastipur *inter alia* alleging therein that as per the direction of the Superintendent, Excise Department, Samastipur, he came to the shop of the petitioner and collected the sample of fruit beer and sent the said sample to the Excise Chemical Examination Department, Patna on 09.02.2017. Thereupon, it has been alleged that upon examination of the said sample, 0.3% v/v ethyl alcohol was found in the fruit beer, which is contrary to the provisions of the Excise Prohibition law. Accordingly, the present F.I.R. has been lodged against the petitioner.

4. It has been submitted on behalf of the petitioner that the petitioner is a salesman of Chahat Beverage Centre dealing with non-alcoholic beverages and the initiation of prosecution under the Bihar Prohibition and Excise Act, 2016 against the petitioner is illegal. It has also been submitted that the non-alcoholic beverages sold by the petitioner are subjected to tests by accredited laboratories at various occasions and always the content in petitioner's non-alcoholic beverages have been found to be either absent or below 0.3% v/v which is the prescribed limit.

5. It has been submitted that the prosecution and penalty under section 35(e) of the Bihar Prohibition & Excise Act, 2016 can only be undertaken and imposed against persons dealing with intoxicant or liquor or other substances in contravention of the provisions of the Excise and Prohibition Act. Since the alcohol content in petitioner’s non-alcoholic beverage is either absent or below 0.3% v/v, they do not qualify as intoxicant or liquor.

6. It has been argued by learned counsel for the petitioner that the Food Safety and Standard (Alcoholic Beverage) Regulation, 2018 defines Alcoholic Beverages as under:-

> *"1.2.3. "alcoholic beverage" means a beverage or a liquor or a brew containing more than 0.5% per cent. abv. The ethanol used in the production of alcoholic beverage shall be of agricultural origin."*

7. It has been further argued that as per the Food Safety and Standard (Alcoholic Beverage) Regulation, 2018 the tolerance limit of ethyl alcohol content shall be ± 0.3%. The tolerance limit has been prescribed for three different categories of beverages.

Sl. No.	**Category of Beverage**	**Tolerance Limit**
i.	For beverage with ethyl alcohol content upto 20% abv.	± 0.3%
ii.	For beverage with ethyl alcohol content of more than 20% abv.	± 0.1%
iii	For Wines	± 0.5%

The non-alcoholic beverage would be covered in the first category. In the present case, the alcohol content in petitioner's non-alcoholic beverage has be found to be 0.3%v/v i.e. well within the tolerance limit.

8. It has been argued by learned counsel for the petitioner that Bureau of Indian Standards (BIS) specifically provides under Indian Standard Beer Specification IS3865:2001 that an alcoholic beverage is one which contains more than 0.5% ethyl alcohol by volume and as stated above, the alcohol content in petitioner's non-alcoholic beverages about 0.3% v/v, therefore, it does not qualify as "alcoholic beverage" under BIS.

9. Learned counsel for the petitioner has relied upon the decision of this Court in the case of ***M/s. Smart India Marketing Proprietorship vs. The Commissioner, Excise Department, Government of Bihar and Ors.*** reported as ***2018 (3) PLJR 165***, and has submitted that in the aforesaid case this Court has held as under:-

> *"30. On a careful consideration of the aforesaid statutory provision, it is evident that what the Act prohibits is the intoxicant or liquor containing alcohol of any strength and purity, as per the definition of "alcoholic" under Section 2(3) of the Act. Simultaneously, it does not prohibit sale etc. of the non-alcoholic substances in conformity with the standard set by the BIS in view of the definition and clarification contained under Section 2(4)(6) of the Act".*

10. Learned APP for the State has opposed the application and has submitted that since the petitioner was found dealing with non-alcoholic beverage/beer, the prosecution cannot be quashed.

11. I have considered the submissions of the parties and perused the materials on record.

12. This Court in ***Cr.W.J.C. No.144 of 2021 (Rahul Kumar vs. The State of Bihar & Ors.); Cr.W.J.C. No.280 of 2021 (Mukesh Kumar vs. The State of Bihar & Ors.)*** and in the case of ***M/s. Smart India Marketing Proprietorship vs. The Commissioner, Excise Department & Ors.*** (supra) has dealt with the cases in which the prosecution was launched against persons who were found to be in possession of the non-alcoholic beverage/beer and prosecution of those persons have been quashed by this Court. While quashing the prosecution, it has been held that the Bihar Excise & Prohibition Act, 2016 does not prohibit sale of non-alcoholic beverages. The object of the aforesaid Act is to enforce, implement and promote complete prohibition of liquor and intoxicant in the State of Bihar. There is no prohibition on sale of non-alcoholic beverages since the same does not at all offend the object and purpose of the Prohibition Act. Even a minor infraction in the ethyl alcohol content of a non-alcoholic beverage like fruit beer does not offend the object and purpose of the Prohibition Act.

13. In the present case, it has been mentioned in the F.I.R. that the ethyl alcoholic containing 0.3% v/v was found from the sample collected from the shop of the petitioner, which is well within the threshold limit of 0.5% ethyl alcohol. Therefore, it will fall in the category of non-alcoholic bear and it cannot be characterized as alcoholic beverage under FSSAI Regulations of 2018 and BIS Beer Specification. I am of the view that the petitioner was selling non-alcoholic beverage according to the standard prescribed and therefore, it cannot be said that the petitioner has committed any offence under the Prohibition Act.

14. In view of the aforesaid reasons, this application is allowed. Accordingly, the F.I.R. vide Pusa P.S Case No.26 of 2017 registered for the offences under sections 420 & 120-B of Indian Penal Code and under section 35(e) of Bihar Prohibition & Excise Act, 2016 and all consequential proceedings arising out of the aforesaid F.I.R. are hereby quashed.

(Sandeep Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	N/A.
Uploading Date	12.09.2024
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