

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL APPEAL (SJ) No.2661 of 2019**

Arising Out of PS. Case No.-135 Year-2017 Thana- GOVT. OFFICIAL COMPLAINT CASE  
District- Sheikhpura

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1. BHAGWAT RAM @ BHAGWAN RAM Son of Late Tejo Ram @ Ramji Ram Resident of Girhinda, P.S and District-Sheikhpura.
  2. Akash Ram @ Akash Kumar Son of Shankar Ram Resident of Girhinda, P.S and District-Sheikhpura.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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**Appearance :**

For the Appellant/s : Mr.Ajit Kumar  
For the Respondent/s : Mr.Abhay Kumar

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**CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR**  
**ORAL ORDER**

7      24-10-2024      Heard learned counsel for the appellants and learned Special P.P. appearing on behalf of the State.

2. The present appeal has been preferred against the judgment dated 18.06.2019 passed in Excise Case No. 135 of 2017 (G.R no. 1335/2016) by the Court of 2<sup>nd</sup> Additional District and Sessions Judge-cum-Special Judge (Excise), Sheikhpura whereby the appellants were convicted under Section 37 (b) of Bihar Prohibition and Excise (Amendment) Act, 2018 and a fine of Rs. 50,000/- was imposed.

3. The prosecution case in brief as per written report of A.S.I Subodh Kumar of Jayrampur police station is that on 13/11/2016 during vehicle checking, the appellants namely Bhagwat Ram @ Bhagwan Ram and Akash Kumar were arrested with



country made pistol in a drunken state. Both of the appellants were examined at Sadar Hospital, Sheikhpura and 48% alcohol was found in the body of accused Bhagwat Ram and 36% alcohol was found in the body of accused Akash Kumar. Both the accused persons were arrested in Jayrampur P.S. Case No. 49 of 2016 for the offences punishable under Sections 25 (1-b) (a) 26, 35 Arms Act and they were sent to the judicial custody.

4. On the basis of written report of informant, Jayrampur PS case No. 50/2016 dated 13/11/2016 for the offence U/s 37 (b) of the Bihar Prohibition and Excise (Amendment) Act, 2018 was registered against the Appellants.

5. The investigation of the case was assigned to SI Shivkishor Shukla. The I.O. upon conclusion of investigation submitted a charge sheet against both accused persons for the offence u/s 37 (b) of Excise Act, 2016 on the basis of which cognizance for the offence was taken and the Appellants were summoned, accordingly the trial of the case proceeded. The charges of Excise Act, 2016 against the appellants to which they pleaded not guilty and claimed to be tried.

6. Learned counsel for the appellants has relied upon a judgment of this Court in the case of *Manju Devi vs. The State of Bihar & Ors. (CWJC No. 2590 of 2022)* and has submitted that



breath analyzer report is not a conclusive proof of consuming liquor by a person. The appellants has also relied upon the judgment of the Hon'ble Supreme Court in the case of ***Bachubhai Hassanalli Karyani Vs. State of Maharashtra*** reported in ***1971(3) SCC 930*** and has submitted that the consumption of alcohol can only be ascertained by way of blood and urine test of a person suspected to have consumed alcohol.

7. Learned counsel for the appellant submits that in the present case, the blood and urine samples of the appellants were never taken and therefore, the appellants cannot be convicted and sentenced only on the basis of the breath analyzer report.

8. Learned Special P.P. appearing on behalf of the State has opposed the application of the appellant.

9. I have considered the submission of the parties.

10. From the facts of the case, it is clear that the appellant has been held to have committed the offence only on the basis of a breath analyzer test. The standard of proof in a criminal trial is strict and the charges must be proved beyond all reasonable doubts. The blood or urine sample of the appellants were not taken and there is no conclusive proof that the appellants had been found to be consuming illicit liquor.

11. A Three-Judge Bench of the Hon'ble Supreme Court in



*Bachubhai Hassanalli Karyani (supra)* were considering the question whether charge of rash and negligent driving after consuming alcohol was proved or not. The Hon'ble Supreme Court therein had held that no conclusion with regard to consumption of alcohol by a person can be made on the fact that the appellants' breath smells of alcohol, that is gait was unsteady, that his speech was incoherent and that his pupils were dilated. Consumption of alcohol can only be conclusively ascertained by way of blood and urine test of the person suspected to have consumed alcohol. The Hon'ble Supreme Court also noticed in the case of *Bachubhai Hassanalli Karyani (supra)* that the doctor had admitted that the person could smell of alcohol even without being under the influence of alcohol.

12. In these circumstances, the conviction of the appellant cannot be held to be legal. Once it is held that the appellant was not found to have consumed illicit liquor, then the conviction and sentence of the appellant cannot be sustained.

13. Accordingly, this appeal is allowed.

14. The judgment dated 18.06.2019 passed in Excise Case No. 135 of 2017 (G.R no. 1335/2016) under Section 37 (b) of Bihar Prohibition and Excise (Amendment) Act by the Court of 2<sup>nd</sup> Additional District and Sessions Judge-cum-Special Judge (Ex-



cise), Sheikhpura is hereby set aside.

**(Sandeep Kumar, J)**

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