

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.4948 of 2021**

Arising Out of PS. Case No.-529 Year-2017 Thana- GOVERNMENT OFFICIAL COMP.
District- Kaimur (Bhabua)

=====

Vijay Shankar Singh Son Of Ghurphekan Singh @ Ghurfekan Singh Resident
Of Village- Kharsara, P.S. Durgawati, District- Kaimur At Bhabua

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

=====

Appearance :

For the Appellant/s : Mr.Sunil Kumar Singh No.10, Advocate
For the Respondent/s : Ms.Abha Singh, Spl. P.P.

=====

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

8 21-10-2024 Heard learned counsel for the appellant and learned
Special P.P. for the State.

2. The present appeal has been preferred against the judgment dated 01.11.2021 passed in Excise Case No. 529 of 2017 by the learned Additional District and Sessions Judge-II-cum-Special Judge, Excise, Kaimur at Bhabhua whereunder the appellant has been convicted under Section 37(b) of the Bihar Prohibition and Excise Act 2016 (as amended) and has been sentenced to pay a fine of Rs. 50,000/- and in default thereof, the appellant shall undergo imprisonment for a term of three months.

3. As per the prosecution case, the appellant was caught on a tempo and after breath analyzer test, he was found



to have consumed illicit liquor.

4. Charge-sheet was submitted against the appellant and after examination of two prosecution witnesses, the appellant has been convicted and sentenced as mentioned above.

5. Learned counsel for the appellant 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 breathe analyzer report is not a conclusive proof of consuming liquor by a person. The appellant has also relied upon a 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.

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

7. Learned Special P.P. has opposed the application of the appellant.

8. I have considered the submission of the parties. 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 breathe analyzer test. The blood sample of the appellant was not taken and there is no conclusive proof that the appellant has been found to be using illicit liquor.

9. 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.

10. Accordingly, this appeal is allowed and the judgment dated 01.11.2021 passed in Excise Case No. 529 of 2017 by the learned Additional District and Sessions Judge-II-cum-Special Judge, Excise, Kaimur at Bhabhua is hereby set aside.

(Sandeep Kumar, J)

P. Kumar

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

