

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3969 of 2019

Arising Out of PS. Case No.-302 Year-2017 Thana- GOVERNMENT OFFICIAL COMP.
District- Saharsa

=====

PRAMOD JHA S/o Late Shyam Jha R/o village- Mahishi, Ward No. 8, P.S.-
Mahishi, District- Saharsa

... .. Appellant/s

Versus

The State of Bihar Bihar

... .. Respondent/s

=====

Appearance :

For the Appellant/s	:	Mr.Madhav Jha
		Mr. Nishant Chaudhary
For the Respondent/s	:	Mr.Syed Ashfaque Ahmad
For the State	:	Mr. Jharkhandi Upadhyay, APP

=====

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

4 13-11-2024 Heard learned counsel for the appellant and learned Spl.
P.P. for the State.

2. The present appeal is preferred on behalf of the appellant challenging the judgment and order dated 19.08.2019 passed by the learned Special Judge (Excise), Saharsa in Special (Excise) Case No. 302 of 2017 by which the trial court was pleased to convict the appellant for the offence punishable under section 37(b) of Bihar Prohibition and Excise Act, 2016 and sentenced to pay a fine of Rs.50,000/- (Rupees Fifty Thousand only) and in default of payment of fine, the convict-appellant shall undergo simple imprisonment of three months.

3. The prosecution case, in nut-shell is that on



28.07.2017, the appellant was caught driving his motorcycle in the drunken position at Hawaii Adda Main Road Saharsa and upon breathe analyzer test, the appellant was arrested.

4. 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.

5. 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.

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

7. I have considered the submission of the parties.

8. 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 standard proof in a criminal trial is strict and the charges must be proved beyond all the reasonable doubts. The blood sample of the appellant was not taken and there is no conclusive proof that the appellant has been found to be consuming illicit liquor.

9. A Three-Judge Bench of the Hon'ble Supreme Court in ***Bachubhai Hassanalli Karyani*** (*supra*) had considered the question whether charge of rash and negligent driver 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 be 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.

10. 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.

11. Accordingly, this appeal is allowed and the judgment and the judgment and order dated 19.08.2019 passed by the learned Special Judge (Excise), Saharsa in Special (Excise) Case No. 302 of 2017 is hereby set aside. If the petitioner is in custody, he is directed to be released forthwith, if he is not wanted in any other case.

(Sandeep Kumar, J)

Vikas/-

U			
---	--	--	--

