

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.4105 of 2019

Arising Out of PS. Case No.-245 Year-2017 Thana- BIHARIGANJ District- Madhepura

AMOL KUMAR Son of Chandra Kishore Sah Resident of Village -
Mouzampatti, P.S.- K.Kothi, District- Purnea

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Vijay Anand Mr. Rahul Singh Mr. Roop Krishan
For the Respondent/s	:	Mr.Syed Ashfaque Ahmad

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

10 22-10-2024 Heard learned counsel for the appellant and learned
Special P.P. for the State.

2. The present appeal has been preferred against the judgment and sentence dated 27.08.2019 passed by the learned 2nd Additional Sessions Judge-cum-Special Judge, Excise, Madhepura in connection with Excise Case No. 20/18 arising out of Bihariganj P.S. Case No. 245/2017 whereby and whereunder the appellant was convicted under Section 37(b) of the Bihar Prohibition and Excise Act, 2016 and a fine of Rs. 50,000/- (Rupees Fifty Thousand) was imposed and in default payment of the aforesaid fine the learned Court had sentenced to undergo three months of simple imprisonment.

3. The prosecution case, in nut-shell is that on 09.08.2017, the informant along with some police personnel



found the appellant in a drunken state. Upon being tested by Breath Analyzer Machine and on the basis of the same, the present case (Bihariganj P.S. Case No. 245/2017) was registered.

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 breath 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 were 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 breath 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 sentence dated 27.08.2019 passed by the learned 2nd Additional Sessions Judge-cum-Special Judge, Excise, Madhepura in connection with Excise Case No. 20/18 arising out of Bihariganj P.S. Case No. 245/2017 is hereby set aside.

(Sandeep Kumar, J)

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