

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.4823 of 2023

Arising Out of PS. Case No.-64 Year-2017 Thana- AIRPORT District- Patna

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1. Mukesh Kumar Son Of Late Muneshwar Yadav @ Muneshwar Singh
Resident Of North Jaiprakash Nagar, P.S - Rajivnagar, District -Patna
 2. Md. Shamshad Son Of Late Md. Aziz Resident Of Village- North Mandiri
Ps- Budha Colony, Districtt- Patna

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Diwakar Prasad Singh, Advocate
		Mr. Om Prakash Singh, Advocate
For the Respondent/s	:	Mr.Bal Mukund Prasad Sinha, APP

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

7 13-03-2024

1. Heard the parties.

2. The instant appeal has been filed under Section 89 of the Bihar Prohibition and Excise Act, against the order dated 25.09.2023, passed by learned Special Judge Excise-1, Patna, in connection with Special Case No. 1144 of 2017, corresponding to Hawaii Adda P.S. Case No. 64 of 2017 by which discharge petition filed by the appellants has been rejected.

3. Mr. Diwakar Prasad Singh, learned counsel appearing for the appellants submits that as per the FIR, both the appellants were not arrested at the spot and as per allegation, two employees of PHED department namely, Rajkumar Singh and Pankaj Kumar were found consuming liquor in the office of



PHED and from the place of occurrence, empty liquor bottles, some glasses and cigarettes were recovered but the appellants were not apprehended at the spot with the said co-accused persons and they were implicated mainly on account of the disclosure made by the apprehended accused persons but except this, there is no material against them to proceed with the alleged offences. It is further submitted that as per the FIR, several police persons were members of the raiding team when the PHED office was raided but none of them was examined by the investigating officer and mainly on the basis of FIR, re-statement of the informant and disclosure of the co-accused the appellants were chargesheeted.

4. Mr. Bal Mukund Prasad Sinha, learned APP appearing for the State while opposing this appeal has fairly accepted that there is no evidence against the appellants in the case diary except the FIR and re-statement of the informant.

5. Heard both the sides and perused the order impugned as well as the case diary. Admittedly, the appellants were not apprehended at the spot and their involvement in the alleged crime of consumption of liquor was only disclosed by the apprehended co-accused but except this, the investigating officer failed to collect any other material to show the



involvement of the appellants in the alleged crime and even no opinion from F.S.L. expert regarding the finger prints over the seized bottles and glasses was taken, so there is no even *prima facie* admissible evidence to proceed against the appellants in respect of the alleged offences and it appears that the learned trial court rejected the appellants’ discharge petition in mechanical manner. If on such type of materials which the investigating officer has gathered, the appellants are put on trial then it will be unnecessary harassment to them and there is great possibility of acquittal of the appellants. Accordingly, this court finds substance in this appeal and the order impugned appears to be bad in the eye of law. Hence, the order impugned is set aside and the appeal stands allowed and the appellants are discharged from all the allegations levelled against them by the prosecution.

(Shailendra Singh, J)

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