

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.4958 of 2023

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

-
1. RAJKUMAR SINGH Son of Late Brijnandan Singh R/o Gupta Market PO
BV College PS. - Airport, Distt. - Patna
 2. Pankaj Kumar Son Rajendra Prasad R/o Mahavir Nagar 70 Feet Bharat
Petroleum Road PO Anisabad, P.S. - Beur, Distt. - Patna

... .. Appellant/s

Versus

THE STATE OF BIHAR

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Diwakar Prasad Singh

For the Respondent/s : Mr.Bal Mukund Prasad Sinha

**CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR
PANDEY**

ORAL ORDER

5 26-06-2024 Heard the learned counsel for the appellants as well
as the learned APP for the State.

2. This appeal has been preferred against the order
of sentence dated 25.09.2023 passed by learned Special Judge
Excise-I, Patna passed in Special Case No. 1144 of 2017,
arising out of Hawaii Adda P.S. Case No. 64 of 2017 by which
discharge petition filed by the appellants has been rejected.

3. 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. The arrested persons disclosed that



the wine was supplied by Md. Shamshad and Mukesh Kumar, who are also the employees of PHED Department.

4. Learned counsel for the appellants submits that Section 47 of the Bihar Prohibition & Excise Act is not applicable in this case as the appellant is not custodian of the premises, which was not under this control. He has further submitted that the Investigating Officer did not examine any witness. He has also submitted that after amendment 30(a) of the Bihar Prohibition & Excise Act has become punishable up to fine of Rs. 5,000/-.

5. On the other hand, the learned APP has opposed the prayer for bail and submitted that two bottles of liquor were recovered from the premises. He has further submitted that Section 47 of the Bihar Prohibition & Excise Act is fairly applicable as the premises was under control of the appellants as he was one of the employees of PHED Department.

6. From perusal of the impugned order, it appears that the materials collected during course of investigation has not been discussed in the impugned order, which shows that only on the basis of FIR, the charges are directed to be framed and the discharge petition of the appellants has been rejected.

7. From bare perusal of Section 47 of the Bihar



Prohibition & Excise Act, it becomes clear that if the premises is allowed to use for consuming liquor or storage, only in that case, it is applicable.

8. In my view, there is no material on the record for framing of the charges. The prosecution against co-accused Mukesh Kumar and Md. Shamshad has already been quashed vide order dated 13.03.2024 passed in Criminal Appeal (SJ) No. 4823 of 2023.

9. Considering the above-mentioned facts and circumstances, the order dated 25.09.2023, whereby the application for discharge of the appellants was rejected, is hereby quashed and the appellants are discharged. Accordingly, the appeal is allowed.

(Nawneet Kumar Pandey, J)

Nirmal/-

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

