

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.770 of 2019

Arising Out of PS. Case No.-166 Year-2010 Thana- KISHANPUR District- Supaul

Bechan Mukhiya Son Of Chhutaharu Mukhiya Resident Of Village-
Nemanma, P.S.-Kishanpur, District- Supaul.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Gopal Kumar Jha, Advocate
For the Respondent/s : Mr. Abhay Kumar, APP

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

7 20-02-2025 Heard the learned counsel for the appellant and the
learned APP for the State.

2. This appeal is directed against the judgment and order dated 23.01.2019 passed by 2nd Additional Sessions Judge-cum-Special Judge, Supaul in S.T. Excise Case No. 674 of 2017 arising out of Kishanpur P.S. Case No. 166 of 2010 convicting the appellant for the offence under Section 47A of the Bihar Prohibition and Excise Act, 2015 and sentenced him to undergo three years R.I. along with a fine of Rs. 5000/- and in default of payment of fine, further imprisonment of three months.

3. As per the prosecution case, huge quantity of wine was recovered from the house of the appellant.

4. At the very outset, learned counsel for the appellant has submitted that in the case the date of occurrence is



21.09.2010 and the Bihar Excise Act, 1915 is applicable in the case of the appellant but the Trial Judge has convicted the appellant under the Bihar Prohibition and Excise Act, 2015 whereas there is no such act.

5. It has further been submitted by the learned counsel for the appellant that the case of the appellant should have been considered under the Bihar Excise Act, 1915. He further submits that the appellant has remained in custody for one year, one month and 10 days and this being the first offence having been committed by the appellant, he could have been imposed a punishment of imprisonment for three months with a fine of Rs. 500/- under Section 47A of the Bihar Excise Act, 1915.

6. The learned counsel for the appellant has further submitted that he limits his arguments to the punishment awarded to the appellant and he does not want to challenge the conviction of the appellant meaning thereby that the appellant accepts his conviction.

7. He further submits that since the offence is the first offence and the punishment which could have been imposed upon the appellant is of three months along with a fine of Rs. 500/-. The punishment in the present case should be altered from Three Years along with fine of Rs 5000/- to three months



along with a fine of Rs. 500/-.

8. Learned APP in view of the position of the law has no answer to the submission of the learned counsel for the appellant.

9. Considering the aforesaid, this appeal is partly allowed. Accordingly, the conviction of the appellant is sustained but the sentence awarded to the appellant is modified to the extent that the sentence awarded to the appellant to undergo rigorous imprisonment from three years along with a fine of Rs. 5000/- is modified to undergo rigorous imprisonment for three months along with a fine of Rs. 500/-.

10. If the appellant has already undergone rigorous imprisonment for a period of three months including the period of remission etc., and if he is not wanted in any other case, he is directed to be released forthwith.

11. The appeal stands partly allowed.

(Sandeep Kumar, J)

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