IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.487 of 2022

Arising Out of PS. Case No.-678 Year-2021 Thana- KATIHAR NAGAR District- Katihar

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Ram Rajak Son of Sri Harendra Rajak Resident of Mahant Nagar, Barmashiya, P.S.- Nagar (Sahayak), District - Katihar- 854105.

... ... Petitioner

Versus

1. The State Of Bihar Through The Director General Of Police, Bihar, Patna Bihar
2. The Superintendent of Police, District – Katihar, Bihar
3. The Station- House- Officer, Nagar (Sahayak) P.S., District - Katihar. Bihar

... ... Respondents

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Appearance :

For the Petitioner/s	:	Mr. Satyabir Bharti, Sr. Advocate Mr. Abhishek Anand, Advocate Ms. Kanupriya, Advocate
For the Respondent/s	:	Mr. Suman Kumar Jha, AC to AAG-3

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 21-08-2025

Heard learned senior counsel appearing on behalf of the petitioner as well as learned counsel for the Respondent-State.

02. The instant criminal writ petition has been filed for issuance of appropriate writ(s), order(s) or direction(s) for quashing the proceedings initiated vide Nagar (Sahayak) P.S. Case No. 678 of 2021 registered under Section 30(a), 35(e) of the Bihar Prohibition & Excise Act, 2016 (for short 'the Excise Act').

03. Briefly stated, the facts leading to the institution of the present case are that the petitioner is accused in Katihar

Nagar (Sahayak) P.S. Case No. 678 of 2021 registered under Section 30(a) of the Excise Act. The prosecution case is that the petitioner had been selling drink containing alcohol. The FIR was registered on the basis of the Lab Report wherein a sample sent for chemical examination was found to be fermented liquor having ethyl alcohol content 0.6% v/v and intoxicant.

04. The challenge to the criminal prosecution is on the ground that the petitioner is not engaged in trade of “intoxicant” and “liquor” as defined under the Excise Act and, therefore, initiation of criminal prosecution under the Excise Act is illegal, *malafide* and fit to be quashed.

05. Learned senior counsel appearing on behalf of the petitioner submits that the petitioner had lawfully purchased the non-alcoholic drinks for sale from his shop from a wholesaler, namely Keshri Beverage through tax paid invoice. The manufacturer of the beverage is United Breweries Limited (UBL), which has obtained license from the Food Safety & Standards Authority of India (FSSAI) vide License No. 10018033000336 for manufacture of different brands of malt-based non-alcoholic beer, namely (i) Kingfisher Ultra Non-Alcoholic Beverage, (ii) Kingfisher Radler Fizzy Malt Lamonade, (iii) Fizzy Lemon Malt and (iv) Kingfisher Radler in

Mint, Ginger and Lemon flavours. The UBL, at its factory at Industrial Area, Kopakalan, District-Patna (Bihar), has been permitted to manufacture aforementioned items under the license granted by the FSSAI. The product in question, for possession of which the petitioner has been prosecuted, is a non-alcoholic drink and Bureau of Indian Standards (BIS) has laid down specifications for manufacture of Carbonated Beverages and non-alcoholic beer has been fined as beverages containing less than 0.5% ethyl alcohol v/v. The BIS has also laid down statutory procedures for testing of ethyl alcohol content in an alcoholic drink. Testing as per the norms is mandatory to determine the actual strength of ethyl alcohol. Before release for sale in the State of Bihar, the product in question was also tested at Government Laboratory, namely Central Food Technological Research Institute, Mysore (Food Safety & Analytical Quality Control Laboratory (CFTRI). The said Laboratory has reported 0% alcohol in the drink. This report contradicts the finding of lab report in the present case suggesting ethyl alcohol content of 0.6% v/v. The UBL got the products of the same batch tested by Intertek India Private Limited and Vimta which are accredited by National Accreditation Board for Testing and Calibration Laboratories (NABL) and test reports of these NABL accredited labs categorically reported 0% alcohol in the said non-alcoholic beverage being manufactured by UBL. The lab reports dated 26.06.2020 and 18.03.2021 of the same product, prepared by the Excise Chemist, Bihar, reveals ethyl alcohol content of 0.4% v/v which again contradicts the impugned lab report attached to the FIR, suggesting ethyl alcohol content of 0.6% v/v. Morevoer, as per Clause 1.3.2. of Food Safety and Standards (Alcoholic Beverages) Regulations, 2018, the tolerance limit for ethyl alcohol content shall be $\pm$ 0.3% ($\pm$ 0.5% in case of wines) for up to 20% and $\pm$ 1.0% for more than 20% above of the declared strength. Thus, applying the tolerance limit of $\pm$ 0.3%, the strength determined by the Excise Chemist would vary from 03%-0.8%. Therefore, the product falls under the definition of non-alcoholic beer as it contains less than 0.5% ethyl alcohol.

06. Learned senior counsel further submits that, in any case, the strength determined by the Excise Chemist, Bihar is not correct considering the reports of Laboratory accredited by NABL and when tolerance limit is applied the product in question will come under the category of non-alcoholic beer. But the FIR has been lodged on an incorrect presumption that anything which contains alcohol, howsoever negligible the content of alcohol may be, and even if the product is sold as per

BIS specifications, is punishable under the Excise Act. Learned senior counsel further submits that for the sake of argument, if it is taken to be true that the alcohol content is 0.6% v/v, it has nowhere been alleged that this drink causes intoxication or is consumed for the purpose of intoxication, which is a necessary ingredient for attracting an offence under the Excise Act. Furthermore, apart from the impugned chemist report failing to carry out the determination in accordance with the prescribed mode of testing and failing to apply the tolerance limit, the chemist has submitted contradictory report of the same drink wherein the ethyl alcohol content was found to be 0.4%. Hence, the report on the basis of which the criminal proceeding has been initiated, has no sanctity in the eyes of law and is fit to be quashed. The leaned senior counsel emphasizes that a minor infraction, even if taken on face value, would not offend the object and purpose of the Prohibition Act. It will not be reasonable to conclude that a minor infraction would lead to intoxication or result in any harmful social or health hazards associated with intoxication. Any other interpretation would make the statute unworkable and unreasonable. Thus, the learned senior counsel submits that on the face of allegation, no offence under the Excise Act is made out against the petitioner and very initiation of criminal proceeding against the petitioner is vitiated.

07. Learned senior counsel further submits that, in this backdrop, this Court has to decide whether for the sale of non-alcoholic beverages strictly undertaken in accordance with the BIS standards and under a license issued by FSSAI for manufacture and sale of non-alcoholic drinks/beer, the petitioner could still be prosecuted alleging violation of the Excise Act? It is also to be seen whether the assumption in the FIR, that sample containing alcohol mixed drinks is an intoxicant, is misplaced and whether the entire prosecution based on an incorrect and misleading chemist report, which is contrary to various other reports for the same product, can be sustained or is fit to be quashed. Thus, the learned senior counsel submits that the continuation of the further proceeding in the present matter would amount to abuse and misuse of the process of law and would cause failure of justice for the simple reason that the allegations do not disclose any offence having been committed by the petitioner.

08. The learned senior counsel further submits that the matter is covered by a decision of learned Single Judge of this Court in the cases of ***United Breweries Limited Vs. The State***

of Bihar & Ors. (Cr.WJC No. 89 of 2021) and ***Mukesh Kumar Vs. The State of Bihar & Ors. (Cr.WJC No. 157 of 2021),*** decided on 09.02.2022, wherein the criminal prosecution, initiated on the basis of report Chemical Examiner recording a finding of sample containing 0.8% v/v of ethyl alcohol, was quashed.

09. Learned counsel appearing on behalf of Respondent-State feebly contends that at this stage there is no need to quash the FIR and the investigation may be allowed to be continued. Learned counsel further submits that the content of ethyl alcohol in the sample taken from the beverages seized from the petitioner has been found above the prescribed limit of 0.5% v/v of ethyl alcohol and, therefore, the prosecution could not be said to be bad.

10. I have given my thoughtful consideration to the rival submission of the parties and perused the record.

11. The Bihar Prohibition & Excise Act, 2016 has been promulgated with an object to enforce, implement and promote complete prohibition of liquor and intoxicants in the territory of the State of Bihar and for matters connected therewith or incidental thereto. Now, Section 2(4) of the Excise Act provides “alcoholic beverage or potable liquor" means any beverage containing alcohol, conforming to BIS standards, that is intoxicating and fit for human consumption. At the same time, Section 2(6) of the Excise Act defines "BIS standards" which means standard prescribed by Bureau of Indian Standards or the standards prescribed by any other Central Government authority, constituted under the relevant Act. "Intoxicant" has been defined under Section 2(40) of the Excise Act in the following manner:

> *" "intoxicant" means –*
>
> *(i) liquor, or*
>
> *(ii) Spirit including silent spirit or ENA, or*
>
> *(iii) Methyl Alcohol, or*
>
> *(iv) Ethanol, whether denatured or not; or*
>
> *(v) any substance from which the liquor may be distilled and which is declared by the State Government by notification in the official Gazette to be an intoxicant for the purpose of this Act, or*
>
> *(vi) intoxicating drug, or*
>
> *(vii) medicinal preparation as defined under Medicinal and Toilet Preparations (Excise Duties) Acts, 1955 or*
>
> *(viii) any preparation or ingredient, either medicinal or otherwise, whether solid, semi solid, liquid, semi liquid or gaseous, either made locally or otherwise, that may serve as an alcohol or a substitute for alcohol and is used or consumed for the purposes of getting intoxicated."*

Further, under Section 2(44) of the Excise Act, definition of "liquor" has been given and it means country or traditional liquor, Indian Made Foreign Liquor, foreign liquor or any preparation or ingredient, whether solid, semi solid, liquid, semi liquid or gaseous, either made locally or otherwise, that may serve as an alcohol or a substitute for alcohol and is used or consumed for the purposes of getting intoxicated.

12. The under-current flowing through the aforesaid provisions is that the substance, for possession of which, a person is being prosecuted, must be consumed for the purposes of intoxication. Now from bare perusal of the FIR, it is evident that while taking sample from the shop of the petitioner, it has been mentioned that it was a non-alcoholic beverage from which sample was drawn. The Excise Act does not prohibit sale of non-alcoholic drink, of course, in conformity with the standards set by BIS and any other Central Government Authority constituted under the relevant Act. Now, FSSAI has provided the tolerance limit of 0.3% v/v for ethyl alcohol content under the Food Safety and Standards (Alcoholic Beverages) Regulations, 2018. In this backdrop, applying the tolerance limit to the standard set by BIS for non-alcoholic beverages which is 0.5% v/v, the ethyl alcohol content in the sample seized from the shop of the petitioner would come below 0.5%. Therefore, initiation of criminal proceeding on the basis of alcoholic content following 0.5% v/v appears to be *prima facie* bad.

13. Now Section 30 of the Excise Act reads as under:

> “ ***30. Penalty of unlawful manufacture, import, export, transport, possession, sale purchase, distribution, etc. of any intoxicant or liuqor. -****Whoever, in contravention of any provision of this Act or of any rule, regulation, order made, notification issued thereunder, or without a valid license, permit or pass issued under this Act, or in breach of any condition of any license, permit or pass renewed or authorisation granted thereunder -*
>
> *(a) Manufactures, possesses, buys, sells, distributes, collects, stores, bottles, imports, exports, transports, removes or cultivates any intoxicant, liquor, hemp;*
>
> *(b)………………………………………*
>
> *(c)……………………………………….*
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> *(d)……………………………………….*
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> *(e)……………………………………….*
>
> *(f)………………………………………..*
>
> *shall be punishable with imprisonment for the term which may extend to life and with fine which may extend to ten lakh rupees.*
>
> *Provided that the punishment:*
>
> *(a) For the first offence shall not be less*

than five years imprisonment and fine of not less than one lakh rupees, and

(b) For the second and subsequent offences shall not be less than ten years rigorous imprisonment and fine of not less than five lakh rupees."

14. To attract the aforesaid provision, the substance must be an intoxicant, liquor or hemp. From further perusal of the FIR, it is also evident that it nowhere mentions that the substance from which sample was drawn is an intoxicant or a liquor which could be served as an alcoholic beverage or which is being used or consumed for getting intoxicated. Moreover, it is also apparent from the FIR that the standard prescribed by FSSAI for detecting the content of ethyl alcohol in the samples have not been followed as the report annexed with the FIR does not disclose adherence to any such guidelines. Further, the report of the chemical examiner is contradictory to the reports obtained for the same set of non-alcoholic drinks and non-adherence to the norms prescribed by the authorities for testing the samples to determine the ethyl alcohol content makes the report of chemical examiner highly dubious and could not be treated as a final report for initiating criminal prosecution against the petitioner. In the case of ***Neeharika Infrastructure***

(P) Ltd. v. State of Maharashtra, (2021) 19 SCC 401, a three Judge Bench of the Hon'ble Supreme Court laid down that the power of quashing should be exercised sparingly with circumspection, in the "rarest of rare cases". While giving illustrations of the cases when FIR can be quashed, the Hon'ble Supreme Court in the case of ***State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335** held that if the allegations made in the FIR, if taken on its face value and accepted in its entirety, does not *prima facie* constitute any offence for make out any case against the accused, then such FIR can be quashed.

15. Thus, in the light of discussion made here-in-before, I am of the considered opinion that there being no prohibition on the sale of non-alcoholic beverage in the State of Bihar and there being no material to show the ethyl alcohol content being more than the prescribed limit or the substance seized were being sold as intoxicant or could be consumed as intoxicant, the same would not fall under the category of such substance which is prohibited under the Excise Act.

16. As already observed the object and purpose of the Excise Act is to enforce, implement and promote complete prohibition of liquor and intoxicants in the State of Bihar, the non-alcoholic beverage of the shop of the petitioner from which samples were drawn and ethyl alcohol content showing a minor increase of 0.1% over the prescribed limit of 0.5% v/v, even without applying the tolerance limit, would not run counter to the provisions of the Excise Act. When the tolerance limit is applied, the alcohol content would come below the prescribed limit of 0.5% and hence, no offence could be made out for violation of provisions of the Excise Act.

17. Therefore, in the light of cumulative reading of the law and facts together and having regard to the aforesaid discussion, the criminal proceeding appears to be an abuse of process of law and hence, the said proceeding arising out of Katihar Town (Sahayak) P.S. Case No. 678 of 2021 is hereby quashed. Other proceedings arising out of the same FIR also stand quashed.

18. In terms of the aforesaid order, the present criminal writ petition stands allowed.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	28.08.2025
Transmission Date	28.08.2025