

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1658 of 2020

Arising Out of PS. Case No.-72 Year-2017 Thana- GOVERNMENT OFFICIAL COMP.
District- Samastipur

=====

KARN MANDAL Son of Late Keval Mandal Resident of Village- Jitwaria,
P.S.- Kalyanpur, District- Samastipur.

... .. Appellant/s

Versus

THE STATE OF BIHAR

... .. Respondent/s

=====

Appearance :

For the Appellant/s : Mr.Mukesh Kumar
For the Respondent/s : Mr. Abhay Kumar

=====

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

5 17-03-2025 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 order dated 19/02/2020 passed by the learned 2nd Additional Session Judge-cum-Special Judge, under the Excise Act, Samastipur in Excise Case No. 72/2017 registered Under Section 37(b) of the Bihar Prohibition & Excise Act, 2016 by which the appellant has been convicted and sentenced to pay a fine of Rs. 50,000/- for the offence Committed Under Section 37(b) of the Bihar Prohibition & Excise Act, 2016. In default of payment of fine the convict Karn Mandal (appellant) is directed to undergo simple imprisonment for three months.

3. The prosecution story in short is that on 03/04/2017



while the Excise Inspector, Samastipur was on patrolling duty, he found the appellant in a suspicious physical condition. Thereafter, the appellant was tested by breath analyzer and 42.7 mg/100 ml alcohol was found in the blood of the appellant. Thereafter, search-cum-seizure list was prepared in presence of two independent witnesses. The appellant was taken into custody and was brought to Sadar hospital where he was treated by the Doctor. The appellant remained in jail for 11 days and thereafter, he was released on bail by the court below.

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 his 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 order dated 19/02/2020 passed by the learned 2nd Additional Session Judge-cum-Special Judge arising out of Excise Case No. 72/2017 is hereby set aside.

(Sandeep Kumar, J)

Saif/-P. Kumar

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

