

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.2483 of 2019

Arising Out of PS. Case No.-39 Year-2017 Thana- TARIYANI CHOWK District- Sheohar

Chulahi Kumar @ Chulhai Kumar Son of Lakhman Sah Resident of Village -
Duma, P.S.- Hirma, District- Sheohar

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Ritwaj Raman (Amicus)

For the State : Mr. Syed Ashfaque Ahmad, APP

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

6 10-02-2025 Heard Mr. Ritwaj Raman (Amicus) and learned APP
for the State.

2. The present appeal has been preferred against the judgment and order dated 2.5.2019 and 3.5.2019 passed by the Additional District and Sessions Judge IInd-Cum-Special Judge, Sheohar in Session Trial No.272/2019, G.R. No.151/2017 corresponding to Tariyani P.S. Case No. 39/2017 for the offence registered under sections 30 (a)/36 of the Excise Act 2016 by which the appellant has been sentence to imprisonment for five years and fine of Rupees One Lac for the offence under section 30 (a) of the Excise Act and in default of payment of fine, the accused shall undergo one month imprisonment.

3. The prosecution story in short is that the informant Rama Shankar Sah who happened to be the Police officer in



course of vehicle checking on 11.3.2017, saw one person coming on motorcycle and after seeing the police, he tried to flee away but the informant apprehended him who disclosed his name as Chulahi Kumar (appellant). The informant searched the motorcycle and recovered one bottle of Royal Stag Premium whiskey containing 375 ml. and one Hero Glamour motorcycle and rupees two thousand. The accused disclosed that the liquor was being carried for drinking on the eve of Holi. On being asked, he did not produced any document with respect to the illicit liquor.

4. On the basis of the aforesaid written statement, Tariyani P.S. Case No.39/2017 has been filed for the offence registered under Section 30(a)/ 36 of the Excise Act.

5. It has been submitted by learned counsel for the appellant that the police investigated the matter and submitted charge sheet and thereafter the Court below took cognizance and charge has been framed under Section 30 (a) and 36 of the Excise Act.

6. The prosecution has produced 7 witnesses in support of the prosecution which are as follows:-

P.W.-1 is Md. Arman who happened to be the Police Officer.



P.W.-2 is Rama Shankar Sah, who happened to be the Police Officer as well as informant of this case.

P.W.-3 is Mahadeo Sharma, who happened to be the constable and member of the raiding party.

P.W.-4 is Aman Kumar, who is the S.H.O of the concerned Police Station.

P.W.-5 is Haribansh Kumar, who is the constable and member of the raiding party.

P.W.-6 Hari Kishor Kumar is an independent witness.

P.W.-7, Gayatri Tiwari is the I.O. of the case.

7. It is submitted that the learned Court below has not considered the contradictory statement among the witnesses and the independent witness has also not supported the allegation against the appellant.

8. Learned counsel further submits that except P.W.6 all the witnesses are police officials and there is complete violation of Section 100 of the Cr. P.C. in preparing the seizure list.

9. Mr. Ritwaj Raman was appointed as *Amicus Curiae* in this case. He has taken this Court to the evidence of witnesses. P.W.-6, Hari Kishore Sah who is the seizure-list witness. In his deposition, he has said that the police had got his



signature on a plain paper and no liquor was recovered in his presence and no seizure-list witness was prepared in his presence. The witness has not been declared hostile by the prosecution. The second seizure-list witness i.e Santosh Sah has not been produced by the prosecution to support the seizure.

10. In the evidence of the witnesses, there is no mention of the sealing of the liquor and whether the liquor recovered was sealed or not. Subsequently, the liquor was sent to FSL on 27.03.2017. When there is no mention of any sealing of liquor, the entire procedure of sending the alleged sealed liquor to FSL becomes doubtful as to whether the liquor which was seized was sent to FSL or some other seized material was sent to FSL.

11. The F.I.R. has been registered on 11.03.2017 at 17:00 hours i.e. 05:00 P.M. whereas the seizure-list was prepared on the same day i.e. at 03:30 P.M. and it contains the details of the F.I.R.

12. From the above discussion, it appears that the entire search and seizure is doubtful and therefore, the appellant cannot be convicted on the basis of such doubtful seizure.

13. Accordingly, the judgment and order dated 2.5.2019 and 3.5.2019 passed by the Additional District and



Sessions Judge IInd-Cum-Special Judge, Sheohar in Session Trial No.272/2019, G.R. No.151/2017 arising out of Tariyani P.S. Case No. 39/2017 is set aside and the appellant is acquitted of all the charges levelled against him.

14. This appeal is allowed.

15. The appellant shall be discharged from the liabilities of the bail bonds.

16. Mr.Ritwaj Raman, who was appointed as an Amicus Curiae in this case, shall be paid Rs. 15,000/- (Rupees Fifteen Thousand only) by the Patna High Court Legal Services Committee, Patna.

17. Interlocutory application, if any, is also disposed of accordingly.

(Sandeep Kumar, J)

P. Kumar/Saif

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