

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.42811 of 2024

Arising out of PS. Case No.-270 Year-2023 Thana- Excise P.S. District- Kaimur (Bhabua)

1. Ravishankar Jha S/o Amirkant Jha R/o Village Sapuripara East Balijagachha
PS Nishchita Dist Howrah
2. Devendra Kumar Sharma S/o Kailashnath Sharma R/o Village Sapuripara
PS Nishchita Dist Howrah

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Bachan Jee Ojha, Advocate Mr. Anand Kishore Choudhary, Advocate
For the State	:	Mrs. Meena Singh, APP

CORAM: HONOURABLE MR. JUSTICE SOURENDRA PANDEY
ORAL JUDGMENT

Date : 25-07-2025

Heard Mr. Bachan Jee Ojha, learned counsel for the petitioners and Mrs. Meena Singh and learned Additional Public Prosecutor for the State.

2. Petitioners seeks quashing of the order of cognizance dated 02.04.2024 passed by learned Exclusive Special Judge-II, Kaimur at Bhabhua in connection with Excise PR Case No. 270 of 2023 registered for the offences under Sections 30(a) and 37 of Bihar Prohibition and Excise Act, 2016.

3. The prosecution case is to the effect that the informant gave a written report to the In-charge of Excise Police Station, Kaimur at Bhabhua alleging therein that while he was on patrolling duty he intercepted the car upon which two persons



were boarded who disclosed their names as Ravishankar Jha and Devendra Kumar Sharma (Petitioners), thereafter, the police checked the vehicle and from the said vehicle 0.50 Litres of illicit foreign liquor was recovered and after examination from analyzer machine Ravishankar Jha (Petitioner No. 1) was found to have taken wine and Devendra Kumar Sharma (Petitioner No. 2) was not found intoxicated.

4. Learned counsel for the petitioners submits that the petitioners are innocent and have falsely been implicated in this case. Learned counsel for the petitioners further submits that the chemical analysis report has been received on E-mail from the Superintendent, Excise, Kaimur at Bhabhua and from which it appears that "Sample was analyzed. As per Bihar Prohibition and Excise Act, 2016, it was found to be fermented liquor (beer) having ethyl alcohol content 7.4% V/V and intoxicant". Learned counsel for the petitioners has also submitted that *prima facie* no case is made out against the petitioners under Sections 30(a) and 37 of Bihar Prohibition and Excise Act.

5. Learned counsel for the petitioners further submits that the petitioners are the residents of Howrah and they were coming from Uttar Pradesh and had been apprehended on false pretext of search of liquor and on non-payment of extraneous



consideration amount they had falsely been implicated showing 0.5 litres of foreign liquor being recovered from the said vehicle.

6. Considering the fact that the allegation against the petitioners is of possessing 0.5 litres of foreign liquor which is a meagre quantity and the societal impact is minimal especially on the fact that the petitioners were not the residents of State of Bihar and admittedly they were travelling from Uttar Pradesh to West Bengal, their place of residence and were apprehended at the borders of Bihar with Uttar Pradesh

7. This Court also takes into account that the petitioners have clean antecedents and even if the allegations are true they are the first offenders with no aggravating factors and the quantity as stated above was meagre, which was seized from the car the petitioners were travelling on.

8. Considering the aforesaid submissions and legal proposition cited by learned counsel for the petitioners, I am of the view that the continuation of criminal proceeding in such circumstances would amount to an abuse of the process of law and would result in a miscarriage of justice in the light of Hon'ble Supreme Court decision in the case of **State of Haryana and Ors. Vs. Bhajan Lal and Ors [(1992) Supp (1) SCC 335]**,



wherein the Hon'ble Supreme Court in paragraph 17 has held as under:-

"17. this Court had set out, by way of illustration, the broad categories of cases in which the inherent power under Section 482 Cr. P.C. could be exercised. Para 102 of the decision reads as follows: '102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the



evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

9. In view of the aforesaid legal and factual submissions and also taking note of the aforesaid legal proposition of Hon'ble Supreme Court and considering the allegation against the petitioner, the continuation of criminal proceeding in such



circumstances would amount to an abuse of the process of law and would result in a miscarriage of justice.

10. Accordingly, the order of cognizance dated 02.04.2024 passed by learned Exclusive Special Judge-II, Kaimur at Bhabhua as well as the entire proceeding of Excise PR Case No. 270 of 2023 registered for the offences under Sections 30(a) and 37 of Bihar Prohibition and Excise Act, 2016 qua the above named petitioners are hereby quashed.

11. In the result, the present quashing application stands allowed.

(Sourendra Pandey, J)

Vikash/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	
Transmission Date	

