

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3649 of 2021**

Arising Out of PS. Case No.-71 Year-2018 Thana- MANJHI District- Saran

PRAMOD KUMAR Son of Kaleshwar Singh Resident of Village Banaura,
P.S. Parsa, District - Saran at Chapra.

... .. Appellant/s

Versus

THE STATE OF BIHAR

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Dewendra Narayan Singh Mr.Gyan Prakash Mr.Sumit Kr. Srivastav Ms.Kumari Sneha
For the State	:	Mr. A.M.P. Mehta, APP

**CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR
PANDEY**

ORAL JUDGMENT

Date : 02-07-2025

Heard the learned counsel for the appellant as well as
the learned APP for the State.

2. This appeal has been preferred against the
judgment of conviction and order of sentence dated 01.07.2021
passed in Ex Trial No. 2485 of 2018, REG. No. 558 of 2018,
arising out of Manjhi P.S. Case No. 71 of 2018 by Sri Dharmendra
Jha, the learned 2nd Additional District and Sessions Judge-cum-
Sepcial Judge Excise, Saran at Chapra whereby and where under
the appellant has been convicted for the offences punishable under
Section 30(a) of the Bihar Prohibition and Excise Act and has been
sentenced to undergo rigorous imprisonment for 10 years and to
pay a fine of Rs. 1,00,000/- and in case of default in making



payment of the fine he has further been directed to undergo rigorous imprisonment for a period of six months.

3. The informant (PW-7), ASI Anuj Kumar Pandey, states in his written report that on 01.04.2018, at about 5 a.m., he, along with ASI Lalu Prasad Mallah (PW-5), Rajendra Kumar Chakraborty (PW-1), Nawal Kishore Singh (PW-6), Chakradhwaj Paswan (PW-3), and Lokesh Ranjan (PW-4), during the course of vehicle checking, saw a truck bearing registration no. HP-22-8705 coming from Balia More, which was being driven rashly. After breaking the barrier and dismantling it, the driver attempted to escape, but he was apprehended. He disclosed his name as Pramod Kumar (the appellant). He apprised the police party that gypsum powder was there in the truck. The truck was searched and 6580 liters of English wine were recovered from that truck. The seizure list was prepared in presence of two independent witnesses. The names of those two independent witnesses have not been mentioned in the FIR. On interrogation, the appellant disclosed that the recovered liquor belonged to Sunil Sharma and one person of Haryana whose name was not within the knowledge of the appellant.

4. On the basis of written report, formal FIR was registered as Manjhi P.S. Case No. 71 of 2018. The investigation was carried out and after completion of the investigation, charge-



sheet was submitted against the appellant on 30.7.2018 under Sections 30, 30(a) and 38 of Bihar Prohibition & Excise Act, 2016. The charges were framed against the appellant on 07.02.2019 under Section 30(a) of Bihar Prohibition & Excise Act, 2016 and Sections 188 and 420 of the IPC.

5. Altogether 8 witnesses were examined on behalf of the prosecution and all the 8 witnesses are the members of raiding party.

6. PW-1, Rajendra Kumar Chakraborty, the then ASI, deposed that the raiding party attempted to stop the rashly driven truck. The appellant (the truck's driver) was apprehended, and 6,580 liters of English wine were recovered from that vehicle. This witness further stated that the SHO prepared the seizure list at the place of occurrence itself. In his cross-examination, the witness stated that the arrested driver disclosed the names of 13 persons, but he could not recall those names.

7. PW-2, Mahendra Sah, Constable No. 140, was also a member of the raiding party. This witness stated that when the raiding party attempted to stop the truck, the driver tried to flee away but was apprehended after a little chase. He disclosed his name as Pramod Kumar (the appellant). The seizure list was prepared in the presence of two independent witnesses. He further stated that the seizure list was prepared at the place of occurrence.



During his cross-examination, he failed to specify the number of bottles recovered from that truck. In paragraph 8 of his deposition, this witness stated that he was not aware as to who was the seizure list witnesses.

8. PW-3 Chakradhwaj Paswan, Constable No. 125 is also a member of the raiding party. The deposition of this witness is exactly similar to PW-2. He stated during his cross-examination that two independent witnesses had signed the seizure list at the place of occurrence.

9. PW-4, Lokesh Ranjan, was also a member of the raiding party. He stated that the driver was arrested while attempting to escape. The driver disclosed his name as Pramod Kumar (the appellant), and more than 6,000 liters of liquor were recovered from the truck. In his cross-examination, this witness stated that the papers were prepared at the police station.

10. PW-5, Lallu Prasad Mallah, ASI has also supported the search and seizure as well as the arrest of the appellant while fleeing away from the place of occurrence. This witness has also stated that seizure list was prepared at the place of occurrence.

11. PW-6, Naval Kishore Singh, the then constable has stated that when the truck was stopped by the police party, they apprehended the driver who disclosed the names of 12



persons involved in that occurrence including Pankaj Singh, Pankaj Shukla, Prahlad Singh, etc. He has also stated that the seizure list was prepared at the place of occurrence in presence of two independent witnesses.

12. PW-7 is the informant himself. He stated that on 01.04.2018 at about 5 p.m., he was on patrolling duty along with other police personnel when they noticed a truck coming from Uttar Pradesh. The police party attempted to stop the vehicle, but the driver broke through the barrier and tried to flee. However, the truck was eventually stopped. The driver disclosed his name as Pramod Kumar (the appellant) and 6,580 litres of English wine were recovered from the truck. The seizure list was prepared in the presence of two independent witnesses. This witness identified his signature on the seizure list (Ext.-1). The formal FIR and written report were exhibited at the instance of this witness as Exhibits 2 and 2/1 respectively. This witness, during his cross-examination, denied the suggestion made by the defense that the seizure list was prepared at the police station.

13. PW-8 is the Investigating Officer. He stated that after receiving charge of the investigation, he went to the place of occurrence but no independent witness was present there. Upon completion of the investigation, he found the case to be true and submitted charge sheet against the appellant.



14. Learned counsel for the appellant has submitted that all the eight prosecution witnesses are members of the raiding party. Though they are unanimous in deposing that the seizure list was prepared in the presence of two independent witnesses, but those two independent witnesses, the signatories of seizure list, have not been examined, as such, the search and seizure is doubtful. He has further submitted that the names of the seizure list witnesses are neither mentioned in the FIR nor in the deposition of any of the eight witnesses examined during the trial, neither the reason for non-disclosure of their names has been explained. He has also submitted that there are contradictions in the depositions of the witnesses regarding the place where the seizure list was prepared. PW-4, in paragraph 2 of his deposition, stated that the papers were prepared at the police station. On the other hand, PW-3, in paragraph 3 of his deposition, stated that the seizure list was prepared at the place of occurrence. This witness has stated further that rest of the seizure list was prepared at the police station, whereas all other witnesses have stated that it was prepared at the place of occurrence itself. Learned counsel has further submitted that the provisions of Section 82 of the Bihar Prohibition and Excise Act, 2016 were not complied with, and due to non-compliance of this mandatory provision, the entire trial stands vitiated.



15. On the other hand, the learned APP for the State has opposed the prayer for bail and submitted that all the prosecution witnesses are unanimous in substantiating the charges by deposing that 6,580 liters of English wine were recovered from the truck, driven by the present appellant. The appellant was arrested at the spot, and the seizure list was prepared in the presence of independent witnesses. She has further submitted that the Chemical Analysis Report (Ext.- 3) shows that the alleged contraband recovered from the truck was English wine.

16. From perusal of the evidences available with the record, it appears that the search and seizure is doubtful. Although it has been mentioned in the FIR and also in the deposition of the witnesses that the seizure list was prepared in presence of two independent witnesses, but the names of those two independent witnesses have not been disclosed, either in the FIR or in the deposition of the witnesses, including that of the informant. The reason for not mentioning the names of the seizure list witnesses in the FIR has also not been clarified. Though PW-7, the informant, during his deposition has stated that he prepared the seizure list (Ext.-1) and his signature was marked as Exhibit 1/1, but he did not disclose the names of seizure list witnesses, though their signatures are there on the seizure list. As such, the search and seizure is doubtful and the benefit of doubt goes in favor of the



appellant.

17. Considering the aforementioned facts and circumstances, the impugned order dated 01.07.2021 passed by the learned 2nd Additional District and Sessions Judge-cum-Special Judge, Excise, Saran at Chapra in Ex Trial No. 2485 of 2018, Reg. No. 558 of 2018, arising out of Manjhi P.S. Case No. 71 of 2018 is hereby set-aside and the appeal is allowed.

18. Since the appellant is in custody, he is directed to be released forthwith, if not wanted in any other case and is discharged from the liabilities of bail bond.

(Nawneet Kumar Pandey, J)

Kundan/-

AFR/NAFR	NAFR
CAV DATE	NIL
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