

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.45860 of 2025

Arising Out of PS. Case No.-183 Year-2023 Thana- NAUGACHIA District- Bhagalpur

Sandho Devi W/O Bauki Rishi Dev R/O Village- Naulia Patti, P.S-
Naugachia, Distt.- Bhagalpur. Petitioner/s

Versus

The State of Bihar Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Vikram Singh, Advocate

For the Opposite Party/s : Mr.Ram Sevak Choudhary, APP

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 25-09-2025

Heard learned counsel appearing on behalf of the petitioner and the learned APP for the State.

2. The petitioner has filed the present application for quashing of the FIR in connection with Naugachia P.S. Case No.183 of 2023, registered under Sections 30(a)/32(ii) of Bihar Prohibition and Excise Act, 2018, pending in the Court of learned Special Excise Judge-II, Bhagalpur, Vide Special Excise Case No.2917/2023.

3. Learned counsel appearing on behalf of the petitioner submitted that there is no relevance in continuation of criminal proceeding against the petitioner or the petitioner should be subjected to face the trial, as no case against the petitioner is made out save and except, the petitioner is the wife of the main accused, who was not arrested by the police and



also in the fact that there was no recovery of any incriminating article from the house of the husband of the petitioner.

4. It is further submitted that the husband of the petitioner has been acquitted. He submitted that the petitioner is an old lady of 78 years and in want of any overt act attributable to the petitioner and the allegation against the petitioner being unbelievable, the entire prosecution case is liable to be quashed on merits. Learned counsel submitted that otherwise also the entire prosecution case is demolished by the informant himself, who in course of the trial in respect of her husband, has not supported the prosecution story and at the same time, no witness has corroborated the allegations leading to acquittal of her husband. In such circumstances, if the pleading is to continue against the petitioner will amount to abuse of the process of the law.

5. Learned APP appearing on behalf of the State has vehemently opposed the prayer of the petitioner to quash the FIR.

6. Heard the parties.

7. The question, firstly arises when the husband of the petitioner has been acquitted on the basis of the evidence, as to why, for the same set of charges, the petitioner be left to face the



trial? Secondly, whether the extraordinary jurisdiction vested in the Court under Section 482 Cr.P.C. can be exercised to quash the entire prosecution, so far as the petitioner is concerned.

8. The Apex Court in Paragraph no.18 and 19 of the case of ***Javed Shaukat Ali Qureshi vs. State of Gurajat (Criminal Appeal No.1012 of 2022)*** has inter alia held as follows : -

“18.The law is well settled. An order refusing special leave to appeal by a nonspeaking order does not attract the doctrine of merger. At this stage, we may refer to a three judge Bench decision of this Court in the case of Harbans Singh v. State of U.P. & Ors.4. In paragraph 18, this Court held thus:

“18. To my mind, it will be a sheer travesty of justice and the course of justice will be perverted, if for the very same offence, the petitioner has to swing and pay the extreme penalty of death whereas the death sentence imposed on his coaccused for the very same 4 (1982) 2 SCC 101

offence is commuted to one of life imprisonment and the life of the coaccused is shared (sic spared). The case of the petitioner Harbans Singh appears, indeed, to be unfortunate, as neither in his special leave petition and the review petition in this Court nor in his mercy petition to the President of India, this all important and significant fact that the life sentence imposed on his co accused in respect of the very same offence has been commuted to one of life imprisonment has been mentioned. Had this fact been brought to the notice of this Court at the time when the Court dealt with the special leave petition of the petitioner or even his review petition, I have no doubt in my mind that this Court would have commuted his death sentence to one of life imprisonment. For the same offence and for the same kind of involvement, responsibility and complicity, capital punishment on one and life imprisonment on the other would never have been just. I also feel that had the petitioner in his mercy petition to the President of India made any mention of this fact of commutation of death sentence to one of life imprisonment on his co accused in respect of the very same offence, the President might have been inclined to take a different view on his petition.” (emphasis added).



19. We have found that the case of accused no 2 stands on the same footing as accused nos. 1,5 and 13 acquitted by this Court. The accused no.2 must get the benefit of parity. The principles laid down in the case of Harbans Singh⁴ will apply. If we fail to grant relief to accused no 2, the rights guaranteed to accused no. 2 under Article 21 of the Constitution of India will be violated. It will amount to doing manifest injustice. In fact, as a Constitutional Court entrusted with the duty of upholding fundamental rights guaranteed under the Constitution, it is our duty and obligation to extend the same relief to accused no.2. Therefore, we will have to recall the order passed in the special leave petition filed by accused no.2.”

9. In the given case, neither the informant has identified the appellant or any other prosecution witnesses have been examined. Learned trial court has found that in spite of having allowed the application under Section 311 of Cr.P.C., the prosecution failed to get examined the official witness, who has seized the article. At the same time, whether the seized article was a prohibited item in absence of examination of the witnesses in course of the investigation under Section 161 Cr.P.C., the trial court found that the allegation alleged against the husband of the petitioner, namely, Bauki Rishi Dev under Section 30(a)/32(ii) of the Bihar Prohibition and Excise Act, to be not true and acquitted the husband of the petitioner.

10. It is well settled principle that when the prosecution case has already been demolished by the informant himself and not supported by any other witnesses, there is no



point of any prohibited item having been recovered in the house of the husband of the petitioner. In this regard, I find that when there is similar or identical evidence of eye witness against two accused by ascribing them the same or similar role, the court cannot convict one accused and acquit the other. The Apex Court in case of *Pawan Kumar Vs. State of Haryana* reported in *AIR 2003 SC 2987* has dealt with the similar contingency. The Apex Court in the case of *Javed Shaukat Ali Qureshi Vs. the State of Gujarat (Cr. Appeal No.1012 of 2022)* has observed that in such circumstances, cases of both the accused will be governed by the principle of parity. This principle means that the Criminal Court should decide like cases alike, and in such cases, the Court cannot make a distinction between the two accused, which will amount to discrimination. Though it is well settled that the power to exercise the jurisdiction under Section 528 of BNSS, equal to 482 of Cr.P.C. should be done in the rarest of the rare cases but in the present case, I find that if similar relief is not extended to the petitioner by reason of parity, then it will amount to violation of fundamental right, guaranteed to the petitioner under Article 21 of the Constitution of India. Accordingly, the FIR in connection with Naugachia P.S. Case No.183 of 2023 is hereby set aside and



quashed, which will lead to abuse the malicious prosecution against the petitioner.

11. The present quashing application is accordingly allowed.

(Purnendu Singh, J)

chn/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	29.09.2025
Transmission Date	NA

