

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.68587 of 2024**

Arising Out of PS. Case No.-421 Year-2017 Thana- DARBHANGA SADAR District-
Darbhanga

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Shailender Kumar Yadav Son of Hari Narayan Yadav R/o Village- Behad
Kabirchak, P.S.- Sadar, District- Darbhanga

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Umesh Kumar Verma, Adv.

For the Opposite Party/s : Mr. Anand Kishore Choudhary, Adv.

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**CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT**

Date : 20-02-2025

Heard the parties.

2. That this application is being filed for quashing the cognizance order dated 17.06.2023 passed by learned court of Special Judge of Excise Act Darbhanga, through which cognizance was taken against the petitioner by editing and rectifying order dated 03.11.2018 by which cognizance was taken against three alleged accused persons only under section 30(a), 38(i), (iii) of Bihar Excise Act in connection with Sadar P.S. Case No. 421 of 2017 dated 02.11.2017.

3. The core issue which was raised by learned



counsel for the petitioner is that despite of availability of all material before the learned trial court at first instance, the learned trial had not taken cognizance against petitioner through its cognizance order dated 03.11.2018. It is submitted that the learned successor court on same materials took cognizance against the petitioner on 17.06.2023 by modifying the earlier cognizance order dated 03.11.2018, which is not permissible under the law.

4. Learned APP for the State fairly submitted that the cognizance against this petitioner was taken vide modified order dated 17.06.2023, where modification was done on the basis of clerical mistakes.

5. In aforesaid context, it would be apposite to reproduce the cognizance order dated 03.11.2018:-

“Case record put up. Perused the case record, FIR, Charge-sheet and Police Case diary. After perusal of the same I find that the I.O. of this case has submitted charge-sheet u/s 30(a), 38(i)(iii) of Bihar excise act, 2016 against the accused (1) Chandra Mohan Singh (2) Tara Mohan Singh (3) Babloo Poddar. According the Cognizance has taken in the offence u/s 30(a), 38(i)(iii) of Bihar



excise act, 2016 against the accused (1) Chandra Mohan Singh (2) Tara Mohan Singh (3) Babloo Poddar. O/C is directed to issue Summon against the accused. Put up on 30-1-19 for appearance.”

6. It would be further apposite to reproduce the cognizance order dated 17.06.2023:-

*“In the Court of Special Judge of Excise Act-I, Darbhanga GO-1686/17
Out of 03 accused persons two accused namely- Chandra Mohan Singh and Babloo Poddar are in attendance. Rest one accused- Tara Mohan Singh is absent. From perusal of case record it is clear that four accused were F.I.R. named namely- Chandra Mohan Singh, Tara Mohan Singh, Babloo Poddar and Shailendra Yadav. Further, C/S was also submitted against them. But, due to clerical mistake cognizance was taken against only three accused namely- Chandra Mohan Singh, Tara Mohan Singh and Babloo Poddar and name of accused- Shailendra Yadav was left out vide order dt. 03-11-18. The mistake is topographical/ classical mistake in nature. Therefore, cognizance order dt. 03-11-18 is edited today and name of accused- Shailendra Kr. Yadav is added to the Column of accused in cognizance order dt. 03-11-18. Cognizance order dt. 03-11-18 is rectified to this extent. O/C to issue Summon of accused Shailendra Kr. Yadav and NB/W against accused- Tara Mohan Singh. On 09-10-23 for appearance.”*

7. No doubt, it is established principle of law that the Special Court (Excise) enjoying the power of



learned Magistrate being the original court. It is established position of law that learned Magistrate can't modify/edit its order subsequently. It is submitted that comparing the impugned order of cognizance i.e., 17.06.2023 *qua* the earlier cognizance order of 03.11.2018, it cannot be said that it was a clerical error. The omission of name while taking cognizance at earlier occasion may be a negligent act but it cannot be said out of clerical error. The negligence of court cannot be supplement under the garb of clerical error and to permit cognizance taking court to modify its earlier order of cognizance.

8. In view of aforesaid, the impugned order of cognizance dated 17.06.2023 passed by learned Special Judge, Excise Act Darbhanga *qua* petitioner is hereby set aside and quashed with all its consequential proceedings.

9. It is made clear that aforesaid observation having no bearing, if material *qua* petitioner surfaced during the trial as to proceed the learned trial court under



section 319 of the Code of Criminal Procedure.

10. Let copy of this order be sent to the
learned trial court, without delay.

(Chandra Shekhar Jha, J)

Sudha/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.02.2025
Transmission Date	27.02.2025

