

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.73433 of 2025**

Arising Out of PS. Case No.-837 Year-2017 Thana- GOVERNMENT OFFICIAL COMP.
District- Nawada

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Raj Kumar Singh S/o Sri Ramesh Singh Resident of village- Army Camp, 14
GTC, Rect Coy, VTC Shariana, P.O.- Subathu, Sub District- Solan, Himachal
Pradesh

... .. Petitioner/s

Versus

1. The State of Bihar
2. Dinesh Prasad Saket, Excise Sub Inspector, Integrated Checking Post,
Rajouli Nawada.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Ms.Bharti Kumari, Advocate.
For the Opposite Party/s : Mrs.Shaheen Begum, APP.

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**CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT**

Date : 16-12-2025

Heard Ms. Bharti Kumari, learned counsel appearing
on behalf of the petitioner and Mrs. Shaheen Begum, learned
APP for the State.

2. The petitioner has preferred the application under
Section 528 of the BNSS, 2023 for quashing of the order taking
cognizance dated 20.03.2020 in connection with G.O. Case
No.837 of 2017, whereby cognizance has been taken by the
learned ADJ-II cum Special Judge, Nawada under Section 30(a)
of the Bihar Prohibition and Excise Act, 2016.

3. The prosecution story, in brief, is that on
11.08.2017 at 01:30 AM at Integrated Check Post, Rajouli,



Nawada, the bus bearing Registration No. BR-06PA/6651 en route from Ranchi to Raxaul was stopped by the Inspector (Excise), Nawada, and other excise officials and the SAP force. Upon proper search, a bag containing 6.75 litres of illicit liquor was recovered in front of the seat of the petitioner in the said bus and was seized.

4. Ms. Bharti Kumari, learned counsel appearing on behalf of the petitioner submitted that on the date of lodging of the excise case, the petitioner was coming from Ranchi and he was on the way to Varanasi, for which leave granted to the petitioner has been brought on record by way of Annexure-2. Learned counsel submitted that a team of Excise Department searched the bus bearing Registration No. BR-06PA/6651 and found 12 bottles of liquor in front seat of the petitioner and seizure list was prepared on which the petitioner who is Lance Naik in Indian Army was forced to put his signature merely on suspicion because the seized liquor was lying in front of the seat of the petitioner which don't belong to him. Learned counsel submitted that no illicit liquor was recovered from the conscious possession of the petitioner as would appear from the prosecution report and the seizure list, therefore, if the petitioner is allowed to face criminal prosecution, the same will amount to abuse of process of the law. Learned counsel on above



background of the facts and the law laid down in the case of ***State of Harayana vs. Bhajan Lal*** reported in (***AIR 1992 SC 604***), seeks for quashing of the order taking cognizance.

5. Learned APP appearing on behalf of the State submitted that cognizance against the petitioner has been taken on the basis of the material available on record, supported by the witnesses and the evidence. He submitted that the learned ADJ-II cum Special Judge, Nawada has not committed any error in taking cognizance vide order dated 20.03.2020 passed in connection with G.O. Case No.837 of 2017.

6. Heard the parties.

7. For better appreciation of the prosecution case, provisions of Sections 30(a) and 56 of the Bihar Prohibition and Excise Act, 2016 and Section 100 of the Cr.P.C. are reproduced hereinafter:

“Section 30. [Penalty for unlawful manufacture, import, export, transport, possession, sale, purchase, distribution, etc. of any intoxicant or liquor. [Substituted by Bihar Act No. 8 of 2018, dated 30.7.2018.]

Whoever, in contravention of any provision of this Act or of any rule, regulation, order made, notification issued thereunder, or without a valid license, permit or pass issued under this Act, or in breach of any condition of any license, permit or pass renewed or authorisation granted thereunder

(a)Manufactures, possesses, buys, sells, distributes, collects, stores, bottles, imports, exports, transports, removes or cultivates any intoxicant, liquor, hemp,”

56. [Things liable for confiscation. [Substituted Bihar Act No. 8 of 2018, dated 30.7.2018.]

Whenever an offence has been committed, which is punishable under this Act.



(a) any intoxicant or liquor unlawfully imported, transported, manufactured, sold, stored, possessed, material, utensil, implement, apparatus, package or covering and or the other contents, if any, of such receptacle, package or covering for the purposes of storing, manufacturing or labelling such intoxicant or liquor;;

(b) any animal, vehicle, vessel or other conveyance used for carrying any intoxicant or liquor; or

(c) any premises or part thereof that may have been used for storing or manufacturing any liquor or intoxicant or for committing any other offence under this Act; shall be liable to be confiscated in a manner prescribed under the provisions of the Act,

(d) The State Government, if deem necessary, may issue necessary directions, guidelines, Regulations and instructions with respect to mode and manner of search, seizure and confiscation.

Section 100 Cr.P.C.: Persons in charge of closed place to allow search.

(1) Whenever any place liable to search or inspection under this Chapter is closed, any person residing in, or being in charge of, such place, shall, on demand of the officer or other person executing the warrant, and on production of the warrant, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

(2) If ingress into such place cannot be so obtained, the officer or other persons executing the warrant may proceed in the manner provided by sub-section (2) of section 47.

(3) Where any person in or about such place is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched and if such person is a woman, the search shall be made by another woman with strict regard to decency.

(4) Before making a search under this Chapter, the officer or other person about to make it shall call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situate or of any other locality if no such inhabitant of the said locality is available or is willing to be a witness to the search, to attend and witness the search and may issue an order in writing to them or any of them so to do.



(5) The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witnesses; but no person witnessing a search under this section shall be required to attend the Court as a witness of the search unless specially summoned by it.

(6) The occupant of the place searched, or some person in his behalf, shall, in every instance be permitted to attend during the search, and a copy of the list prepared under this section, signed by the said witnesses, shall be delivered to such occupant or person.

(7) When any person is searched under sub-section (3), a list of all things taken possession of shall be prepared, and a copy thereof shall be delivered to such person.

(8) Any person who, without reasonable cause, refuses or neglects to attend and witness a search under this section, when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under section 187 of the Indian Penal Code (45 of 1860).

8. Thus the statutory scheme governing search and seizure procedure prescribed under Section 100 of the Code of Criminal Procedure, 1973, delineates the procedure for conducting search of a closed place and mandates that such search shall be made, as far as practicable, in the presence of two or more independent and respectable inhabitants of the locality, with preparation of a seizure list duly signed by the witnesses and the person searched, thereby ensuring fairness, transparency and credibility of the search process. Section 56 of the Bihar Prohibition and Excise Act, 2016, in turn, defines and confers power upon the authorised officers to conduct search, seizure and arrest in respect of offences under the Act, while



expressly requiring that such powers be exercised in accordance with the provisions of the Code of Criminal Procedure. Thus, the special statute does not operate in isolation but incorporates and reinforces the procedural safeguards prescribed under the Cr.P.C.”

9. I have perused the allegation made in the prosecution case and the seizure list. The petitioner is Lance Naik in Indian Army and illicit liquor has been seized from the bag which was lying in front of the seat of the petitioner. The petitioner was travelling from Ranchi to Varanasi. The alleged seizure was effected at Rajouli Chowk. The petitioner has claimed that he was forced to sign and receive the seizure list even though he disowned the liquor. Record reveals that the petitioner being Lance Naik in the Indian Army is allotted with monthly quota as per his rank and there was no question of carrying liquor to be sold in the State of Jharkhand. The seizure list reveals that on all the bottles seized, label mentions “only for sale in Jharkhand” and it was lying in front seat of the petitioner. The question arises whether the same belongs to the petitioner? If answer is in negative, continuation of the criminal proceeding against the petitioner will amount to abuse of the process of the law.

10. The Hon’ble Supreme Court in ***Mohan Lal v.***



State of Rajasthan, reported in **(2015) 6 SCC 222**, has categorically held that “possession” in criminal jurisprudence must necessarily mean conscious possession involving dominion and control coupled with knowledge, and that mere proximity or presence is insufficient to fasten criminal liability which is reproduced hereinafter:

“14. Dr Harris, in his essay titled “The Concept of Possession in English Law” [Published in Oxford Essays in Jurisprudence (Edited by A.G. Guest, First Series, Clarendon Press, Oxford, 1968).] while discussing the various rules relating to possession has stated that “possession” is a functional and relative concept, which gives the Judges some discretion in applying abstract rule to a concrete set of facts. The learned author has suggested certain factors which have been held to be relevant to conclude whether a person has acquired possession for the purposes of a particular rule of law. Some of the factors enlisted by him are : (a) degree of physical control exercised by person over a thing, (b) knowledge of the person claiming possessory rights over a thing, about the attributes and qualities of the thing, (c) the person's intention in regard to the thing, that is, “animus possessionis” and “animus domini”, (d) possession of land on which the thing is claimed is lying, also the relevant intention of the occupier of a premises on which the thing is lying thereon to exclude others from enjoying the land and anything which happens to be lying there; and Judges' concept of the social purpose of the particular rule relied upon by the plaintiff.”

11. On proper analysis of the above scheme of the Act, admitted position is that the alleged recovery of illicit liquor has been made from the front seat of the vehicle and not from the physical possession or control of the petitioner.

12. In the case of ***State of Harayana vs. Bhajan Lal*** reported in **(AIR 1992 SC 604)**, the Apex Court laid down as follows:



"102. In this 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 reproduce 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 in 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 un-controverted allegations made in the FIR or complaint and 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 allegation in the FIR do not constitute a cognizable offence hut constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a magistrate as contemplated under section 159 (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 of the concerned act (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 concerned. Act providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with malafide 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 private grudge"



13. In the absence of any material to demonstrate that the petitioner had conscious knowledge, control or dominion over the alleged contraband, the essential ingredients of the offence under Section 30(a) of the Bihar Prohibition and Excise Act, 2016 are conspicuously absent. Consequently, the continuation of the present criminal proceeding against the petitioner would amount to an abuse of the process of law and is liable to be quashed. Accordingly, the order taking cognizance dated 20.03.2020 passed in G.O. Case No.837 of 2017 by the learned ADJ-II cum Special Judge, Nawada is hereby quashed and set aside.

14. The quashing application stands disposed of.

(Purnendu Singh, J)

mantreshwar/-

AFR/NAFR	AFR
CAV DATE	NA
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