

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.74819 of 2024

Arising Out of PS. Case No.-64 Year-2017 Thana- SIMRI District- Darbhanga

Manish Kumar @ Manish Kumar Das son of Madan Das Resident of Village-
Nirmali Ward No. 03, Police Station- Nirmali, District -Supaul .. Petitioner/s
Versus

The State of Bihar Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Nilendu Kumar Choudhary, Advocate
For the Opposite Party/s : Mr. Md. Matloob Rab, APP

CORAM: HONOURABLE MR. JUSTICE SOURENDRA PANDEY
ORAL JUDGMENT

Date : 28-07-2025

Heard learned counsel for the petitioner and the learned
APP for the State.

2. The instant application has been filed for quashing the order dated 13.08.2024 passed by the learned Special Judge (Excise Act)- II, Darbhanga in G.O. Case No. 1016 of 2017 arising out of Simri P.S. Case No. 64 of 2017, whereby and whereunder fresh summon has been issued against the petitioner for facing trial in the aforesaid case, which is pending in the court of the learned Special Judge (Excise Act)- II, Darbhanga though it has been clearly stated that cognizance is taken only once in a case and the cognizance order of this particular case has been set aside by order dated 30.07.2024 passed in Cr. Misc. No. 30608 of 2024 by a Coordinate Bench.

3. Learned counsel for the petitioner has submitted that the petitioner had moved earlier before this Hon'ble Court for



quashing the impugned order dated 22.05.2023 passed by the learned Special Excise Judge- 11, Darbhanga in Simri P.S. Case No. 64 of 2017 (G.O. - 1016 of 2017) by filing Cr. Misc. No 30608 of 2024 and the same was heard and allowed by a Coordinate Bench of this Court by order dated 30.07.2024 but so far as order which is challenged in this petition, has not been challenged by the petitioner earlier.

4. As per the FIR, it is alleged by the informant that upon a secret information, a pickup van was intercepted and the police party got a hold on it, but the driver managed to flee and the staff of the pickup van was apprehended who disclosed his name as Anand Kumar and disclosed that the driver who ran away was Anand Kamat. He also disclosed that the pickup van bearing Reg. No.- BR-06GA-2374 having 39 cartoon Royal Stag liquor belongs to one Manish Kumar Das (petitioner) who was in a Scorpio. Consequently, a total of 349.560 liters foreign liquor was recovered.

5. Learned counsel for the petitioner has submitted that from perusal of the entire First Information Report no offence is made out against the petitioner as except being named in the First Information Report there is nothing against him. Learned counsel has further submitted that from perusal of the First



Information Report it is clear that on disclosure of the apprehended person, the informant reached the house of the petitioner but there also nothing has been found which suggests that this petitioner was involved in any manner in the present case. During the investigation, police has also not found any material against this petitioner, but it is quite surprising that without finding anything that could give an indication that the present petitioner was involved in liquor business, in a very mechanical manner the investigation was kept going on against him while the charge sheet has been submitted against the arrested person on 30.08.2017 vide Charge Sheet No. 94/2017. Learned counsel has submitted that it is quite surprising that the charge sheet No. 94/2017 was submitted against one Anand Kumar on 30.08.2017 and on the same date without applying any judicial mind the court below has taken cognizance against Anand Kumar and also directed the office to open supplementary case record for the accused persons against whom the further proceeding was going on. It is also quite surprising that even though the cognizance has not been taken against the present petitioner and on the direction of the court supplementary case record for the accused persons against whom the further proceeding is going on has been opened the



court below on 11.09.2017 in a very mechanical manner issued warrant of arrest against the present petitioner. Learned counsel has next submitted that thereafter the petitioner moved before this Hon'ble Court for grant of his anticipatory bail vide Cr.Misc. No. 46602 of 2017 and the same was allowed on 17.10.2017 by a coordinate Bench of this Court.

6. Learned counsel has further submitted that the I.O. of the present case once again submitted a charge sheet on 25.05.2018 bearing Charge sheet No. 42/2018. In the said charge sheet the Investigating Officer disclosed that the name and address of Rakesh Kumar was not found as disclosed by the apprehended accused Anand Kumar. It has further been stated that charge sheet is submitted against the present petitioner Manish Kumar Das and Anand Kamat and the case was not found true against Rakesh Kumar. It is quite surprising that the same apprehended accused Anand Kumar had disclosed two names one of Manish Kumar Das alleging that he was the person who was bringing the liquor and one Rakesh Kumar alleging that he was the persons from whom the liquor was brought. The police party who did not find anything from the house of the petitioner submitted charge sheet against him, but declared the case untrue against the said Rakesh Kumar as his



name and address was not found. The I.O. did not even apply his mind that the said Anand Kumar might be concocting a story against both the persons for saving his skin.

7. Learned counsel has next submitted that though the second charge sheet bearing C.S. No. 42/2018 was submitted on 25.05.2018 after the lapse of about five years the court below on 22.05.2023 took cognizance against the petitioner holding therein that already a cognizance has been taken on 30.08.2017 and supplementary case record was opened against the present petitioner, hence the order of cognizance dated 30.08.2017 would be applied against this petitioner as well. It is quite surprising that by order dated 30.08.2017 the cognizance was taken against the petitioner though the charge sheet was submitted against the petitioner much later i.e. on 25.05.2018, which is against the established rule as cognizance should be taken after the submission of charge sheet. The order dated 22.05.2023 is quite violative to section 468 of the Cr.P.C. which talks about bar for taking cognizance after lapse of the period of limitation.

8. Learned counsel has thus submitted that the court below in a very haste manner has taken cognizance against the petitioner by order dated 22.05.2023 after the lapse of five years



without considering the provisions made under section 468 of the Cr.P.C. The petitioner thus challenged the said order dated 22.05.2023 in Cr. Misc. No. 30608 of 2024 and the same was allowed on 30.07.2024 by a coordinate bench of this Court by setting aside the order impugned dated 22.05.2023 with further direction to the learned court below to pass a reasoned order of cognizance within 15 days from the date of receipt/communication of a copy of this order. Thereafter, the court below again considered the materials available on record in the light of the order of the Hon'ble High Court and proceeded against the accused Manish Kumar Das (petitioner) and Anand Kamat and directed the office clerk to issue fresh summons against both the aforesaid accused.

9. It has been submitted that it is a well settled law that once the cognizance is taken for an offence it will not be taken again that means double cognizance is not permissible according to law. As per the learned Special Judge, the reason for taking cognizance is that the Hon'ble High Court has ordered to take a fresh decision, but the learned Special Judge failed to read the decision passed by this Hon'ble Court alongwith the decisions by Hon'ble Apex Court in several cases in which it has come that double cognizance is not in accordance with law.



10. It has been argued that even if the decision of this Hon'ble Court is taken into consideration the learned court below has only been directed to pass a reasoned order of cognizance within fifteen days. No such reason has been given in the order dated 13.08.2024 as to why cognizance has been taken once again and in what circumstances double cognizance can be taken. Learned counsel has lastly submitted that the petitioner is a student who has obtained a degree of Para Medical from Darbhanga Medical College Hospital and has a bright career. It is beyond imagination that a person who is perusing such a prestigious career will indulge in such activity as discussed in the prosecution story.

11. The learned counsel for the petitioner in order to enforce his argument on the point of 2nd cognizance, referred to various judicial pronouncements especially the one passed in **Jamuna Singh & Ors vs. Bhadai Sah** reported in (1964) **SSCR 37** wherein in Para-14 the Hon'ble Supreme Court of India observed :

“14. Cognizance having already been taken by the Magistrate before he made the order there was no scope of cognizance being taken afresh of the same offence after the police officer's report was received. There is thus no escape from the conclusion that the case was instituted on Bhadai



Sah's complaint on November 22, 1956, and not on the police report submitted later by the Police Sub-Inspector, Baikunthpur. The contention that the appeal did not lie under s. 417(3) of the Code of Criminal Procedure must therefore be rejected”

12. The learned counsel then refers to the order passed by our own High Court in the case of **Lalan Kumar vs. State of Bihar** passed in **Cr. Misc. No. 37503 of 2023** wherein this Court in Para-18 has observed :

“18. The present case is based on an F.I.R. whereas Section 142(a) provides that notwithstanding anything contained in the Code of Criminal Procedure, no Court shall take cognizance of any offence punishable under Section 138 except upon a complaint in writing made by the payee or, as the case may be, the holder in due course of the cheque. The learned Magistrate, upon receiving the police report had taken cognizance of the offence vide order dated 28.09.2020. The order taking cognizance has been quashed by the competent Revisional Court by order dated 06.04.2021 and at the same time the matter has been remanded back to the learned Magistrate for passing fresh order. The remand would eventually lead to taking cognizance on the same set of charges by the learned Magistrate. This principle of law has been cogently elucidated by



the Apex Court in Jamuna Singh's Case (supra), wherein it has been held that once cognizance is taken by a Magistrate, second cognizance cannot be allowed to be taken for the same set of offences.”

13. The learned counsel thus submits that the learned Court below erred in taking cognizance afresh, which amounts to taking second cognizance which is not permissible in law as held by various judicial pronouncements.

14. The learned APP for the State has submitted that the application is misconceived and the learned Court below was well within his powers to take cognizance once the police had submitted supplementary charge sheet against the petitioner and one another finding evidence against them.

15. This court finds that a charge sheet filed subsequently does not automatically apply to a cognizance order that was already passed in relation to co-accused, who were charge sheeted earlier. The law distinguishes between the process of taking cognizance of an offence and framing of charge against the accused. This Court also takes into account that if a supplementary charge sheet is filed against persons not named in the original charge sheet, like the present petitioner, a fresh cognizance order is required for those additional accused. The Hon'ble Supreme Court and the various High Courts have made



it clear that the court cannot simply extend or apply the earlier cognizance as an umbrella to cover these new accused persons. The Court must independently consider the material against the new accused before issuing process against them.

16. Section 319 Cr. PC clearly defines that in cases where, during trial or inquiry, evidence emerges against someone not initially charge sheeted Courts can take cognizance and add such a person as an accused. The mode of taking cognizance in such a case will be the same as for the original accused, but there has to be a judicial determination requiring satisfaction that the material justifies such a fresh step for taking cognizance against the next accused. The courts have also observed that a charge sheet filed subsequently against other accused does not automatically mean that the prior cognizance order covers them. The Court must expressly consider and apply its mind to the supplementary charge sheet and material for those co-accused before proceeding.

17. From the discussions made above, it is clear that a subsequent charge sheet against other accused requires this court to expressly consider and take cognizance regarding those individuals. The previous cognizance taken in respect of co-accused does not automatically extend to persons named later in



a supplementary charge sheet. The court's judicial application of mind for each accused based on the material placed is necessary before process can be issued. This court finds that the previous order taking cognizance being applied in the case of the petitioner could not be held to be legally valid, and hence this court had rightly set aside the previous order-taking cognizance dated 22.05. 2023 as far as the petitioner was concerned and had also further directed to the learned court below to apply its mind and pass a reasoned order of cognizance within 15 days from the date of receipt/ communication of a copy of the said order.

18. From the perusal of the impugned order, this court finds that the learned court below in Paragraph 6 has referred to the evidence, which has come against the petitioner and had opined considering those evidences that there is a prima facie case being made out against the petitioner. This court finds the submissions made by the learned counsel for the petitioner misplaced, wherein he takes a leaf out of the observations made in Paragraph 9 of the impugned order :

"It is also well- settled principle of law that cognizance is taken only once in a case".

19. This observation of the Court was independently correct, however, as observed here-in aforesaid, the cognizance



of the offence as far as the subsequent accused i.e., the present petitioner was imperative to be taken subsequently in view of the fact that the court has to apply its judicial mind for the subsequent accused vis-a-vis the materials collected against him by the police. This court at this point would like to refer to the judicial pronouncement in the case of **Sharif Ahmed and Anr vs the State of Uttar Pradesh and Anr** as reported in **2024 SCC online SC 726** wherein the Hon'ble Supreme Court has in Para 14 referred to the provisions of Sections 190, 204, 211, 212, 213 and 218 of the Cr.PC. Further, the Hon'ble Supreme Court, after consideration of various judicial pronouncements made on the aforesaid provisions of the Criminal Procedure Code and taking the same into account in paragraph 24 has observed thus :

“24. It is the police report which would enable the Magistrate to decide a course of action from the options available to him. The details of the offence and investigation are not supposed to be a comprehensive thesis of the prosecution case, but at the same time, must reflect a thorough investigation into the alleged offence. It is on the basis of this record that the court can take effective cognisance of the offence and proceed to issue process in terms of Section 190(1)(b) and Section 204 of the Code. In case of doubt or debate, or if no offence is made out, it is open to the Magistrate to exercise other



options which are available to him.”

20. From the aforesaid discussions and the perusal of the judicial pronouncements, I do not find any illegality in the order impugned as the learned Court has prima facie found a case against the accused persons and has thus passed an order taking cognizance against the petitioner, which was well within his jurisdiction on account of the fact that the previous order was set aside by this court, directing him to pass an order afresh.

21. In view of the above, the present application is devoid of merits and is hereby dismissed.

(Sourendra Pandey, J)

Prakash/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

