

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.1624 of 2022

Arising Out of PS. Case No.-725 Year-2021 Thana- KANTI District- Muzaffarpur

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Anil Kumar Sinha, Son of Rampdarath Sinha R/o Block Statics Officer,
Kanti, Muzaffarpur, Permanent R/v- Moregao, P.S.- Ghoshi, District-
Jehanabad

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Home,
Govt. of Bihar, Patna
2. The Director General of Police, Bihar, Patna
3. The Inspector General of Police, Bihar, Patna
4. The Deputy Inspector General of Police, Muzaffarpur Range, Muzaffarpur
5. The Superintendent of Police, Muzaffarpur at Muzaffarpur
6. The Deputy Superintendent of Police, Muzaffarpur, at Muzaffarpur
7. The S.H.O., Kanti Police Station, Muzaffarpur, at Muzaffarpur

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajendra Narain, Sr. Advocate
Mr. Sanjay Kumar Sharma, Advocate
For the Respondent/s : Mr. Suman Kumar Jha, AC to AAG-3

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

ORAL ORDER

8 16-01-2025 1. The petitioner has approached this Court under

Article 226 of the Constitution of India for the following
reliefs:-

(a) Issuance of writ in the nature of Certiorari for



quashing the F.I.R. of Kanti P. S. Case No. 725 of 2021, dated 16.11.2021 for offence under Section 37(C) of the Bihar Prohibition and Excise Act, 2016 against the petitioner and on the same set of allegation a department inquiry was also instituted at Collectorate Muzaffarpur in which petitioner was exonerated from all allegations as alleged in the F.I.R.

(b) To grant such other relief / reliefs for which the petitioner is entitled to.

2. The petitioner was booked for the offence under Section 37(C) of the Bihar Prohibition and Excise Act, 2016 on the allegation that he consumed liquor in violation of the said Act. The Circle Inspector and the SHO, Kanti Police Station, Muzaffarpur made a *suo motu* statement, alleging, *inter alia*, that on 16th of November, 2021, he received an information that some employees of the Block Office were engaged in mutual strife and conflict under the influence of liquor. After getting the said information, he reached the Block Office by his official vehicle at about 04.20 p.m. and found one person in drunken condition in Block Statistical Office. On being asked, he disclosed his name as Anil Kumar Sinha, Block Statistical Officer, Kanti, Muzaffarpur. He was smelling of alcohol when he was talking. The informant arrested him and brought him to



the Police Station. In the Police Station, he examined the said person with the help of breath analyzer and found 289 mg. / 100 ml. alcohol in his smell. He was then sent to the local hospital for medical examination. The informant then lodged a complaint under Section 37(C) of the said Act, as a result of which, Kanti P. S. Case No. 725 of 2021 was instituted.

3. It is also on record that over the self same incident, a departmental enquiry was conducted by the Collector, Muzaffarpur and the petitioner was exonerated from the departmental charge of illegal consumption of alcohol.

4. The instant writ petition has been filed for quashing the F.I.R., lodged against the petitioner by issuing a writ of Certiorari.

5. Mr. Rajendra Narain, learned Sr. Advocate appearing on behalf of the petitioner, at the outset, submits an unreported decision passed by this Court in C.W.J.C. No. 2590 of 2022 (Manju Devi v. The State of Bihar through the Additional Chief Secretary, Department of General Administration, Government of Bihar, Patna & Ors.) decided on 19th of June, 2024.

6. In the said report, the Police Authority found the accused consuming alcohol on the basis of breath analyzer



report.

7. This Court relying on ***Bachubhai Hassanalli Karyani v. State of Maharashtra***, reported in (1971) 3 SCC 930, held that no conclusion with regard to consumption of liquor by a person can be made on the fact that the person's breath was smelling of alcohol, that his gait was unsteady, that his speech was incoherent and that his pupils were dilated. Consumption of alcohol can only be ascertained by way of blood and urine test of a person suspected to have consumed alcohol.

8. It is further submitted by the learned Sr. Advocate that the petitioner was sent to Block Health Centre for medical examination. The Medical Officer reported that there was no facility to check alcohol intake at CHC. The Medical Officer was not, therefore, sure as to whether the petitioner consumed alcohol or not.

9. The learned Sr. Advocate on behalf of the petitioner next refers to the decision of Hon'ble Supreme Court in ***Madhavrao Jiwaji Rao Scindia & Anr. v. Shambhajirao Chandrojirao Angre & Ors.***, reported in 1988 AIR 709. It is held in the said judgement that the legal position is well settled when a prosecution at the initial stage is asked to be quashed.



The test to be applied by the Court is as to whether the uncontroverted allegation as made *prima facie* established the offence. It is also for the Court to take into consideration any special features which appear in a particular case to consider a prosecution to continue. This is so on the basis that the Court cannot be utilized for any oblique purpose and where in the opinion of the Court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue. The Court may while taking into consideration the special facts of a case also quashed proceeding even though it may be at a preliminary stage.

10. In the instant case, the learned Sr. Advocate has raised the issue as to whether it is expedient and in the interest of justice to permit a prosecution to continue.

11. The prosecution failed to produce any cogent evidence admissible under the law on perusal of which the Court can come to a conclusion finding that the petitioner had consumed alcohol in violation of the Bihar Prohibition and Excise Act, 2016. On the same ground, the petitioner was exonerated from the departmental proceeding. Therefore, further continuation of criminal proceeding would be unjust under the



facts and circumstances of the case.

12. The learned Sr. Advocate for the State/Respondents, on the other hand, submits that on the basis of the judgement passed by the Hon'ble Supreme Court in ***Bachubhai Hassanalli Karyani*** (supra), this Court cannot throw away breath analyzer report as a proof of consumption of alcohol because Section 75 of the Bihar Prohibition and Excise Act, 2016 speaks of power to conduct breath analysis test and medical tests. Section 75 of the Act runs thus:-

“75. Power to conduct breath analysis tests and medical tests – (1) Any of the Officers mentioned in Section 73 may ask any person to undergo breath analysis test and / or such medical tests as he may deem fit.

(2) The person so asked, is duty bound to submit himself to such medical tests or breath analysis test. Should he fails to do so, it shall be presumed that he has committed an offence under Section 37 of the Act and shall be prosecuted accordingly.

(3) The reports of such tests shall be admissible as evidence under the Indian Evidence Act, 1872.”

13. The plain reading of Section 75 suggests that an Officer named under Section 73 of the Act may ask any person to undergo breath analysis test and/or such medical tests as he



may deem fit. Sub-section (2) of Section 75 says that if the suspect fails to commit himself to breath analysis test and/or medical test, it shall be presumed that he has committed offence under Section 37 of the Act. Sub-section 3 states that reports of such tests shall be admissible as evidence under the Indian Evidence Act.

14. Thus, it is contended on behalf of the State that the Act does not preclude breath analysis test as means to ascertain as to whether a person has consumed alcohol or not.

15. A close reading of the above-mentioned provision suggests that Section 75 states breath analysis test “and/or” medical test. The word “and/or” is of paramount importance. If the above-mentioned provision is read as breath analysis test and medical test report, then, both the reports are necessary for holding a person guilty of consuming alcohol even *prima facie*. If, on the other hand, “or” is read in isolation of “and” therefore either of the report is sufficient to hold an accused guilty for consuming alcohol. Where the Statute has provided both conjunctive and disjunctive propositions in between two tests, in a criminal trial where proof beyond necessary doubt is essential to be established, the provision is to be read conjunctively and not in disjunctive fashion.



16. This problem may be necessary viewing the problem in another angle. Sub-section 2 of Section 37 imposes an element of reverse burden on the accused. It says that if the accused fails to submit himself in breath analysis test and/or medical test, the Court shall presume that he consumed alcohol and, therefore, committed offence under Section 37 of the said Act. It is now well established that even in case of “reverse burden”, the prosecution is under obligation to proof the foundational fact.

17. The decision of the Hon'ble Supreme Court in case of *Noor Aga v. State of Punjab & Anr.*, reported in (2008) 16 SCC 417, may be referred in support of my observation.

18. Thus, to proof foundational fact, the prosecution is under obligation to produce both breath analysis report and the medical report. In the absence of the medical report, the prosecution cannot sustain.

19. In the instant case, the F.I.R. was based on breath analysis report alone. The F.I.R. in the absence of medical report is not sustainable.

20. For the reasons stated above, the instant writ petition is allowed.

21. The F.I.R., bearing Kanti P. S. Case No. 725 of



2021, dated 16.11.2021, instituted for the offence under Section 37(C) of the Bihar Prohibition and Excise Act, 2016, is quashed and set aside.

(Bibek Chaudhuri, J)

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