

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3340 of 2021**

Arising out of PS. Case No.-60 Year-2018 Thana- MALAYPUR District- Jamui

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Aneesh Manjhi S/o Garib Manjhi Resident of Village Kairi Bank Mushari,
Malaypur, P.S. Malaypur, Dist. Jamui.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Prabhat Kumar Singh, Advocate
For the Respondent/s : Mr. Satyanarayan Singh, APP

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**CORAM: HONOURABLE MR. JUSTICE ANSUL @ ANSHUL RAJ
ORAL JUDGMENT**

Date : 27-01-2026

This appeal has been preferred by the appellant for setting aside the impugned judgment of conviction and order of sentence dated 30.06.2021 passed by learned 1st Additional District & Sessions Judge-cum-Special Judge Excise, Jamui in Tr. No. 217 of 2018 arising out of Malaypur P.S. Case No. 60 of 2018, whereby the concerned Trial Court has convicted the appellant for the offence punishable under Section 37(b) of the Bihar Prohibition and Excise Act, 2016 and awarded sentence to a fine of Rs. 50,000/- and on default of payment of fine the appellant will have to suffer imprisonment for three months which the appellant has already suffered prior to conviction shall be adjusted against three months sentence.

2. The brief case of the prosecution, as per *fardbeyan*



of informant, namely, Kamlesh Kumar Singh, ASI, Malaypur Police Station is that he lodged a written report stating therein that on 20.08.2018 at about 14.30 o'clock when he along with his patrolling party proceeded he got an information on mobile that the appellant is in inebriated condition and creating nuisance in the locality. In order to verify his intoxicating condition, he was examined by breath analyzer machine and it was found that he has consumed 0.19 MI alcohol, thereafter, on the basis of the written report the present case, i.e., Malaypur P.S. Case No. 60 of 2018 was registered for the offences under Section 290 of the IPC and 37(b) of Bihar Prohibition and Excise Act, 2016.

3. The learned trial court after perusal of materials collected during investigation and hearing the accused/appellant took cognizance on 28.02.2019 under Section 290 IPC and Section 37(b) of Bihar Prohibition and Excise Act, 2016, thereafter, the charges were framed on 04.05.2019 under Section 290 IPC and Section 37(b) of Bihar Prohibition and Excise Act, 2016 against the appellant, which was explained to the appellant, to which, he pleaded not guilty and claimed to be tried.

4. To substantiate its case, the prosecution has examined altogether six witnesses. They are:-(i) **PW-1 Baliram Ya-**



dav (ii) PW-2 Alok Kumar (iii) PW-3 Chitranjan Kumar (iv) P.W. 4 Ram Prakash Kumar (v) P.W. 5 Kamlesh Kumar Singh (Informant) and (vi) P.W. 6 - Arun Rai. The defence has also examined one witness on his behalf, i.e., DW-1 Gorki Devi who is mother of the appellant.

5. Apart from the oral evidence, the prosecution has also relied upon following exhibits/documentary evidences, which are:-

Sl. No.	No. of exhibits	Name of documents exhibited
1.	Exhibit-1	Signature of the informant on the breath analysis report.
2.	Exhibit-2	Signature of the informant on the written application.
3.	Exhibit-2/1	Signature of the SHO Amit Kumar.
4.	Exhibit-3	Handwriting and signature of formal FIR then SHO Amit Kumar.
5.	Exhibit-4	Handwriting and signature of Arrest Memo S.A.N.I. Kamlesh Kumar Singh.

6. On the basis of evidences/circumstances as surfaced during the trial, the learned trial court has examined the appellant/accused under Section 313 of the CrPC, where he com-



pletely denied the evidences surfaced during the trial and claimed his complete innocence.

7. Taking note of the evidence as surfaced during the trial and after considering the arguments as advanced by both the parties, the learned Trial Court has convicted the appellant and awarded sentence to a fine of Rs. 50,000/- and on default of payment of fine appellant will have to suffer imprisonment for three months which the appellant has already suffered prior to conviction shall be adjusted against three months sentence.

8. Being aggrieved with the aforesaid judgment of conviction and order of sentence, the appellant has preferred the present appeal. Hence, the present appeal.

9. I have considered the rival submissions canvassed by the learned counsel appearing for the parties and also perused the deposition of the witnesses examined during trial before learned trial court.

10. It appears from perusal of record that altogether six witnesses have been examined during trial, i.e., **PW-1 Bali-ram Yadav, PW-2 Alok Kumar, PW-3 Chitranjan Kumar and P.W. 4 Ram Prakash Kumar** were constables at Malaypur Police Station and they have supported the prosecution case in similar manner. **P.W.-5 Kamlesh Kumar Singh, ASI** who is the



informant of the case and **P.W-6 Arun Rai, SI** of Malaypur Police Station have also supported the case of the prosecution. **DW-1 Gorki Devi** has deposed that due to previous dispute with one Shiv Ji Singh, his son has been implicated in the present case.

11. In view of aforesaid discussions, it appears that there is no independent witness to support the prosecution case and all the witnesses are official witnesses and the breath analyzer machine has not been produced to substantiate the charge under Section 37(b) of Bihar Prohibition and Excise Act, 2016 and also there is nothing on record to suggest that whether breath analyzer machine was capable to give correct report. Again no blood test of accused seems to have been conducted which is a major flaw. The procedure for search and seizure has not been followed, therefore, it creates a serious doubt and thus the appellant deserves to be acquitted of the charges levelled against him.

12. Accordingly, the present appeal stands allowed.

13. The impugned judgment of conviction and order of sentence dated 30.06.2021 passed by learned 1st Additional District & Sessions Judge-cum-Special Judge Excise, Jamui in Tr. No. 217 of 2018 arising out of Malaypur P.S. Case No. 60 of



2018, whereby the concerned Trial Court has convicted the appellant for the offence punishable under Section 37(b) of the Bihar Prohibition and Excise Act, 2016 and awarded sentence to a fine of Rs. 50,000/- and on default of payment of fine the appellant will have to suffer imprisonment for three months which the appellant has already suffered prior to conviction shall be adjusted against three months sentence, is hereby quashed and set aside. Consequently, the above-named appellant is acquitted from the charges levelled against him.

14. Since the appellant is on bail, he is being discharged from his liabilities of bail bonds and sureties.

15. Fine, if any, deposited by the appellant be returned to him immediately.

16. Office is directed to send back the trial court records along with a copy of this judgment to the learned trial court, forthwith.

(Ansul @ Anshul Raj, J)

niku/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	

