IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1991 of 2018

CNR No. BRHC010569862018

Arising Out of PS. Case No.-100 Year-2017 Thana- SONBERSHA RAJ District- Saharsa

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Anshul @ Md. Anshu @ Md. Anshul Son of Late Md. Ali Hasan, Resident of Village- Gangjala, Ward No.15, P.S.- Saharsa, District- Saharsa.

... ... Appellant/s

Versus

The State Of Bihar

... ... Respondent/s

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Appearance :
For the Appellant : Mr. Nafisuzzoha, Advocate
Ms. Shabina Talat, Advocate
For the State : Mr. Binod Bihari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH

ORAL JUDGMENT

Date : 27-10-2026

Heard Mr. Nafisuzzoha, learned counsel for the appellant and Mr. Binod Bihari Singh, learned Additional Public Prosecutor for the State.

2. This appeal has been filed challenging the judgment of conviction dated 10.05.2018 and order of sentence dated 15.05.2018 passed by the learned 2nd Additional Sessions Judge-cum-Special Judge, Excise Act, Saharsa, in Special Case No. 287 of 2017 arising out of Sonbarsha Raj P.S. Case No. 100 of 2017, whereby and whereunder the appellant has been convicted for the offence punishable under Section 30(a) of the Bihar Prohibition and Excise Act, 2016 and has been sentenced to undergo rigorous imprisonment for ten years and to pay a fine

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of Rs. 5,00,000/-.

3. The prosecution case, in brief, is that on 20.07.2017, at about 11:00 A.M., the informant, namely Md. Izhar Alam, the then Station House Officer of Sonbarsha Raj Police Station, received secret information regarding the arrival of illicit foreign liquor in a white coloured *Sumo Victa* car. Acting upon the said information, he proceeded with the police force towards *Dehad More*. At about 12:10 noon, the police party noticed a white coloured *Sumo Victa* car approaching from the direction of *Malin*, which stopped a little away from *Dehad More*. According to the prosecution, four persons got down from the vehicle and attempted to flee, whereupon the appellant was apprehended. He disclosed his name as Md. Anshu and stated that he was merely the driver of the vehicle. Upon search, fifteen cartons containing 360 bottles of foreign liquor of the brand '*Royal Stag*', each bottle containing 375 ml, were allegedly recovered from the vehicle. A search-cum-seizure list was prepared and the appellant was taken into custody. On the basis of the self-statement of the informant, Sonbarsha Raj P.S. Case No. 100 of 2017 was instituted under Section 30(a) of the Bihar Prohibition and Excise Act, 2016 and Sections 272, 273 and 34 of the Indian Penal Code.

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4. In order to bring home the guilt of the appellant, the prosecution examined altogether six witnesses. P.W. 1, namely Md. Izhar Alam, is the informant and the then Station House Officer of Sonbarsha Raj Police Station. He supported the prosecution case regarding the receipt of secret information, the raid, the apprehension of the appellant and the alleged recovery of liquor from the vehicle. P.Ws. 2 to 5, namely Sikandar Sahni, Santosh Kumar, Neeraj Kumar and Anuj Kumar Upadhyay, respectively, were members of the raiding party and supported the prosecution version regarding the occurrence, search and seizure. P.W. 6, namely Arun Kumar, is the Investigating Officer, who deposed regarding the investigation, the documents prepared in connection with the case and the subsequent steps taken during investigation. The prosecution also adduced documentary evidence, including the search-cum-seizure list, the memo of arrest, the self-statement of the informant, the formal F.I.R. and the communications relating to the seized liquor and its destruction. However, the two seizure-list witnesses, namely Sushil Paswan and Sanjit Kumar, were not examined during trial.

5. On the other hand, the defence examined six witnesses. D.W. 1, namely Md. Taqdeer; D.W. 2, namely Md.

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Aseem and D.W. 3, namely Raghunath Sah, deposed, in substance, that the appellant was a driver and sought to support the defence version regarding the vehicle being driven by him. D.W. 4, namely Md. Mustafa, stated that the appellant was a driver working under him and referred to the appellant's presence in another vehicle. D.W. 5, namely Manjar Alam, also supported the defence version that the appellant was a driver and raised doubt regarding the circumstances in which he was apprehended in the present case. D.W. 6, namely Md. Moin, similarly deposed that the appellant was a driver and disputed the prosecution version concerning the circumstances and time of his apprehension. The defence evidence, therefore, sought to question the prosecution version regarding the appellant's role and the circumstances in which he was apprehended. The appellant denied the allegations and claimed innocence.

6. After hearing the parties, the learned trial court convicted the appellant and sentenced him, as indicated in the opening paragraph of this judgment.

7. Learned counsel appearing for the appellant submits that the impugned judgment of conviction and order of sentence suffer from serious infirmities. It is submitted that all the prosecution witnesses examined in the present case were

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members of the raiding party and no independent witness has been examined to corroborate the alleged search and seizure. It is further submitted that the two seizure-list witnesses, namely Sushil Paswan and Sanjit Kumar, were not examined during trial, thereby depriving the defence of an opportunity to test their account of the alleged recovery. Learned counsel further submits that the prosecution has failed to establish the circumstances in which the alleged liquor was recovered and the appellant was apprehended. It is also contended that the appellant was merely a driver and according to the defence, was apprehended outside the vehicle, without any reliable evidence establishing his conscious involvement in the alleged transportation of illicit liquor. Reliance has also been placed upon the judgment of a Co-ordinate Bench of this Hon'ble Court passed in the case of ***Pramod Kumar vs. The State of Bihar*** arising out of ***Criminal Appeal (SJ) No. 3649 of 2021***, particularly Paragraph Nos. 14, 15 and 16 to contend that the reliability of the search and seizure proceedings must be examined where the independent seizure witnesses have not been examined and the alleged recovery is supported only by members of the raiding party. Learned counsel, therefore, submits that the prosecution has failed to prove the charge

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beyond reasonable doubt and the appellant is entitled to acquittal.

8. On the other hand, learned Additional Public Prosecutor for the State has opposed the appeal and submitted that the prosecution witnesses have consistently supported the recovery of fifteen cartons of foreign liquor from the vehicle in question. It is further submitted that the search-cum-seizure list and other documentary evidence corroborate the prosecution version and that the learned trial court, after properly appreciating the evidence on record, has rightly convicted and sentenced the appellant. Accordingly, it is submitted that the impugned judgment does not warrant any interference.

9. Having heard learned counsel for the parties and upon perusal of the materials available on record, this Court finds that the prosecution case rests substantially upon the alleged recovery of illicit foreign liquor from the Sumo Victa and the assertion that the appellant was driving the said vehicle. All the prosecution witnesses examined in support of the occurrence were members of the raiding party. Though the evidence of police witnesses cannot be discarded merely on account of their official status, the prosecution evidence must nevertheless inspire confidence and establish the alleged

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recovery beyond reasonable doubt.

10. In the present case, the two seizure-list witnesses, namely Sushil Paswan and Sanjit Kumar, have not been examined. Their non-examination does not, by itself, render the prosecution case unacceptable; however, it assumes significance when considered alongside the fact that all the witnesses supporting the alleged search and seizure were members of the raiding party. The prosecution has not produced the testimony of either of the independent seizure-list witnesses to corroborate the recovery proceedings. The defence has, therefore, been deprived of the opportunity to test their account of the search and seizure.

11. In this regard, reliance may be placed upon the judgment of this Hon'ble Court in the case of ***Pramod Kumar*** *(supra)*. In the said case, the Court examined the circumstances surrounding the preparation of the seizure list and held that the search and seizure were doubtful where the prosecution failed to disclose the names of the independent seizure witnesses and their evidence did not establish the reliability of the alleged recovery. Though the factual circumstances of the present case are not identical, the principle concerning the careful scrutiny of search and seizure proceedings is relevant. In the present case,

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despite the names of the seizure-list witnesses being available, neither of them was examined to substantiate the alleged recovery.

12. It is further evident from the record that the defence examined six witnesses, whose depositions, in substance, sought to question the prosecution version concerning the appellant's role as a driver and the circumstances in which he was apprehended. The defence evidence cannot be rejected merely because it has been adduced on behalf of the accused. It is required to be considered along with the prosecution evidence to determine whether the charge has been established beyond reasonable doubt. The allegation that the appellant was driving the vehicle, by itself, does not dispense with the prosecution's obligation to establish the charge through reliable evidence. In the facts of the present case, the absence of testimony from the seizure-list witnesses, coupled with the fact that the alleged recovery is supported by members of the raiding party, calls for closer scrutiny of the prosecution version.

13. Upon an overall consideration of the evidence and the materials available on record, this Court finds that the prosecution has failed to establish the charge against the appellant beyond reasonable doubt. The alleged recovery is not

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supported by the testimony of either of the two seizure-list witnesses and the prosecution evidence must be assessed in the light of the circumstances brought on record by the defence. The cumulative effect of these deficiencies creates a reasonable doubt regarding the prosecution case. It is a settled principle of criminal jurisprudence that the prosecution must prove its case beyond reasonable doubt and that, where a reasonable doubt arises from the evidence on record, the benefit thereof must go to the accused. Accordingly, this Court finds that the appellant is entitled to the benefit of doubt.

14. In that view of the matter, the judgment of conviction dated 10.05.2018 and order of sentence dated 15.05.2018 passed by the learned 2nd Additional Sessions Judge-cum-Special Judge, Excise Act, Saharsa, in Special Case No. 287 of 2017 arising out of Sonbarsha Raj P.S. Case No. 100 of 2017, are hereby set aside.

15. Accordingly, the appellant, above named, is acquitted of the charge under Section 30(a) of the Bihar Prohibition and Excise Act, 2016 and is also discharged from the liability of his bail bond. The fine, if already deposited by the appellant, shall remain deposited and in case the same has not been deposited, the appellant shall not be required to deposit

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the same.

16. Accordingly, this appeal stands allowed.

17. Interlocutory application(s), if any, also stand disposed of.

(Prabhat Kumar Singh, J)

shashank/-

AFR/NAFR	AFR
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