

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.49921 of 2016

Arising Out of PS. Case No.-204 Year-2016 Thana- GOVERNMENT OFFICIAL COMP.
District- Vaishali

=====

Manoj Jha @ Manoj Kumar Jha, son of Yogeshwar Jha, Resident of Village-
Khilwat, P.S. Bidupur, District- Vaishali.

... .. Petitioner/s

Versus

1. State of Bihar
2. Assistant Inspector, Excise, Sadar Circle, District Vaishali, Hajipur.

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Mukesh Kumar, Adv.

For the Opposite Party/s : Mr. Sri Chandrasen Prasad Singh, APP

=====

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

6 16-02-2026 The instant criminal miscellaneous petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 with a prayer to quash the order dated 02.08.2016 passed in Complaint Case No. C2A 204 of 2016, arising out of P.R.No.-12 dated 28.07.2016 by the Chief Judicial Magistrate, Vaishali at Hajipur whereby and whereunder the learned Magistrate has taken cognizance of the offences punishable under Sections 47(a) and 54 of Bihar Excise Amendment Act, 2016 (hereinafter referred to as the 'Excise Act'). against the petitioner.

2. Mr. Mukesh Kumar, learned counsel for the petitioner submits that the cognizance of the alleged offences against the petitioner has been taken on the basis of the prosecution complaint filed by the Excise Official showing the



recovery of 194.04 litres of foreign liquor from the alleged hut, said to be in possession of the petitioner but the petitioner had no connection with the said alleged hut from where alleged recovery was shown to have been made and this fact is supported by two circumstances, firstly in the prosecution complaint, two persons namely, Sukhram Rajak and Md. Rustam were shown as witnesses of the recovery with whom the petitioner had inimical terms during the relevant period of time and in this regard, specific statement has been made in paragraph no. 9 of the petition and in support of this fact, a copy of the proceeding initiated under Section 144 Cr. P.C. in between the petitioner and Md. Idrish, Badri Baitha and others has been filed and among the opposite parties in that case, Md. Idrish is the father of Md. Rustam and Badri Baitha is the son of Sukhram Baitha who were made witnesses of the seizure of the alleged liquor in the present case. Secondly, on the same date and at the same alleged place recovery of 119.975 litres of foreign liquor was also shown to have been made by the same Excise Inspector and the only difference is that the alleged house from which that recovery was made was shown as belonging to one namely, Bochai Miya but both the recoveries at the same place showing from two different persons was not



possible which shows fabrication of false story and this is further supported by the fact that the prosecution report was sent to the concerned court six days after the alleged recovery without any explanation. It is further submitted that the concerned Excise Officer simply mentioned in the prosecution report that the alleged hut belonged to this petitioner as stated by the witnesses but without recording their statements submitted the prosecution report before the concerned court and further, both the said persons had inimical terms with the petitioner. It is lastly submitted that for the malicious prosecution by way of criminal proceeding initiated by the concerned Excise Inspector, the petitioner who is a practicing Advocate has filed a complaint against him in which cognizance of offences has also been taken against the said officer.

3. Though learned APP has opposed this petition but he has not been able to rebut the aforesaid circumstances pointed out by the petitioner's counsel.

4. Considering the aforesaid submissions and mainly taking into account the facts that two recoveries of the liquor were shown by the same Excise Inspector at the same place in possession of two different persons and further the witnesses upon the basis of whose statements the Excise Official relied



had inimical terms with this petitioner and the learned APP has not shown any reasonable reason of inordinate delay of six days in sending the prosecution report to the concerned Judicial Magistrate, in my opinion, these circumstances sufficiently show the malicious intention of the concerned Excise Officer in filing the prosecution complaint against the petitioner hence subjecting the petitioner to trial for the alleged offences of the Excise Act of which cognizance has been taken would be complete harassment to him and would not serve the ends of justice. As such, the order impugned taking cognizance of the alleged offences and the subsequent criminal proceeding initiated against the petitioner in the light of the said cognizance order are hereby set aside/quashed and the instant petition stands allowed.

(Shailendra Singh, J)

Rajiv/-

U		T	
---	--	---	--

