

(2023) 10 PAT CK 0029

In the Patna High Court

Case No : Criminal Miscellaneous No. 67708 Of 2019

Bindeshwari Prasad Yadav @ Bindi Yadav

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 06-10-2023

Acts Referred:

Constitution Of India, 1950 — Article 226

Bihar Excise Act, 1915 — Section 5, 18(2), 19(1), 47, 47(a), 48, 48(1), 53, 53(c), 54, 63

Bihar Excise Act, 2015 — Section 18(2), 19(1), 47, 48, 53, 53(c), 54

Bihar Prohibition and Excise Act, 2016 — Section 13, 30, 32, 37, 98

Repealed Excise Act, 2015 — Section 47, 48

Citation : (2023) 10 PAT CK 0029

Hon'ble Judges : Satyavrat Verma, J

Bench : Single Bench

Advocate : Satyabir Bharti, Sushmita Sharma, Kanupriya, Abhishek Anand, Rabindra Kumar

Final Decision : Allowed

Judgement

1. Heard Ms. Sushmita Sharma learned counsel for the petitioners and learned A.P.P. for the State.

2. I.A. No. 01 of 2023 has been filed for deletion of the name of petitioner no. 1 from the array of party in Cr. Misc. No. 67708 of 2019 as the petitioner no. 1, during pendency of this application, left for his heavenly abode.

3. The name of the petitioner no. 1 is deleted from the array of party in Cr. Misc. No. 67708 of 2019.

4. Accordingly, I.A. No. 01 of 2023 stands allowed.

5. The present application has been filed for quashing of the order dated 01.04.2017 passed by the learned Additional Sessions Judge-V-cum-Special Judge, Gaya in Sessions Trial No. 01 of 2017 arising out of Rampur P.S. Case No.

131 of 2016 whereby charges have been framed against the petitioner under Sections 47(a), 48, 53(c), 54 and 63 of the Bihar Excise Act, 1915 as amended by the Bihar Excise (Amendment) Act, 2016.

6. Learned counsel for the petitioner, at the outset, submits that she is aware of her limitation in arguing this matter. It is further submitted that though charges have been framed, trial has commenced and is on the verge of conclusion but still this Court can interfere in the matter in the event if the Court comes to a conclusion that allowing the criminal proceeding to continue would be an abuse of the process of the Court.

7. Learned counsel for the petitioner further submits that before making submission on the merits of the case, it would be pertinent to bring on the record certain facts which have important bearing on the adjudication of the present case.

8. Learned counsel for the petitioner next submits that the State of Bihar on 31.03.2016 in terms of its new excise policy, imposed an absolute ban on the manufacture, bottling, distribution, sale, purchase, possession and consumption of country-liquor by any person. It is submitted that the notification dated 31.03.2016 (Annexure-1 to this application) was confined to country liquor only. It is further submitted that on 31.03.2016 itself the opposite party passed the Bihar Excise (Amendment) Act, 2016 (Annexure-2 to this application) amending Sections 47, 48, 53, 54 and 63 of the Bihar Excise Act, 1915 providing severe punishment for committing offences under the Act and even the accused were presumed guilty unless he proves to the contrary i.e. the onus to prove innocence was on the accused. It is next submitted that amended Section 47 of the Bihar Excise Act, 2015 (hereinafter referred to as 'the Act, 2015') enhanced the existing punishment for committing an offence of unlawful import, export, transport, manufacture, possession, sale etc. of an intoxicant for a maximum period of three years to life imprisonment and fine up to Rs.10 lakh. Similarly, amended Section 48 of the Act, 2015 provided that it shall be presumed, until the contrary is proved, that the accused person has committed the offence, for the possession of which he is unable to account for satisfactorily. Further, amended Section 53 of the Act, 2015 provided for punishment of imprisonment for life and with fine which may extend to Rs.10 lakh for committing offence under Section 53(c) of the Act, 2015 where the allegation is of consumption in a public place, permitting drunkenness or allowing assembly of unsocial element in the premises or on the premises of liquor establishment. Further, amended Section 54 of the Act, 2015 enhanced the punishment for unlawful possession of an intoxicant from three years to ten years and fine up to Rs.10 lakh. Similarly, Section 63 substituted in the amended Act provided punishment in the same manner to a licensee under the Act who knowingly permits it to be used for commission by any other person of an offence punishable under the provisions of the Act.

9. Learned counsel for the petitioner further submits that all of a sudden, on

05.04.2016, the opposite party declared its New Excise Policy, imposing ban on the wholesale and retail trade and on consumption of foreign liquor by any license holder as would be evident from notification dated 05.04.2016 (Annexure-3 to this application). It is next submitted that though sale and consumption of foreign liquor and India made foreign liquor was implemented but its manufacture and possession was not prohibited. Further Section 18(2) of the Excise Act, 2015 was not amended which provided that a person may have in his possession of any intoxicant which has been lawfully imported and Section 19(1) of the Act which also was not amended permitted possession of an intoxicant to the extent of retail sale as determined by the Board of Revenue under Section 5 of the Act. The limit of retail sale as determined by the Board of Revenue under Section 5 of the Act was 3 litres of foreign liquor and 5.2 litres of beer.

10. At this stage, Ms. Sushmita Sharma learned counsel for the petitioner submits that one important aspect has to be borne in mind as the same would have important bearing on the adjudication of the case. It is submitted that as recorded hereinabove Section 48 of the amended Act provided that it shall be presumed, until the contrary is proved, that the accused person has committed the offence, for the possession of which he is unable to account for satisfactorily.

11. It is further submitted that the State Legislature enacted the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as 'the Prohibition Act') by which the Bihar Excise Act, 1915 was repealed and the Prohibition Act came into force from 02.10.2016. Further, Section 98 of the Prohibition Act contained repeal and savings clause which provided that --- anything done or any action taken or any proceeding pending before any Officer, Authority or Court including proceeding by way of investigation, shall be deemed to have been done or taken under the corresponding provisions of this Act and any proceeding pending before the earlier Act on the commencement of the Prohibition Act shall be deemed to be a proceeding pending before it as per this Act and shall be continued to be dealt with accordingly. Further, mandated that all references in any enactment to any of the provisions of the Act so repealed shall be construed as references to the corresponding provisions of this Act. Learned counsel, thus, submits that in sum and substance, the pending proceeding under the Act was saved as per Section 98 of the Prohibition Act.

12. It is next submitted that the Bihar Prohibition and Excise (Amendment) Act, 2018 was notified and made effective from 30.07.2018 and was made applicable to all pending cases. The amended Section 32 of the Prohibition Act which corresponds to Section 48 of the Repealed Excise Act, 2015 has done away with the concept of deemed offender and presumption of guilt against the accused persons.

13. Learned counsel for the petitioner submits that in this background the facts of the case be appreciated. It is further submitted that Rampur P.S. Case No. 131 of 2016, dated 10.05.2016 was registered under Sections 47(a), 48, 53(c) and

54 of the Bihar Excise Act, 1915 against the petitioner alleging that on 09.05.2016 at 10:15 p.m. an information was received to arrest the absconding accused, namely, Rocky @ Rakesh Ranjan Yadav an accused of Rampur P.S. Case No. 130 of 2016. Accordingly, the informant along with the police force reached the house of the petitioner but the petitioner was not present in the house. However, 4.450 litres of foreign liquor was recovered from the house as detailed in the FIR and it was alleged that petitioner occasionally use to consume liquor in his house along with his friends, accordingly, the FIR was instituted.

14. It is submitted that the FIR was instituted prior to coming into force of the Prohibition Act, 2016 and the Bihar Prohibition and Excise (Amendment) Act, 2018. It is further submitted that though the liquor was not recovered from the conscious possession of the petitioner, however, in view of Section 48(1) of the Bihar Excise Act, 1915 the presumption of guilt against the petitioner was made and, hence, he was made an accused.

15. It is next submitted that the police, after investigation, submitted charge sheet dated 24.05.2016 (Annexure-5 to this application) under Sections 47(a), 48, 53(c), 54 and 63 of the Bihar Excise Act, 1915 against the petitioner as the petitioner was considered to be a presumed offender with implied possession of liquor, as such, no investigation was done as to whether the alleged consumption of liquor was done before or after 05.04.2016 and whether the liquor found was within the permissible limit.

16. Learned counsel for the petitioner submits that after coming in force of the Prohibition Act, 2016 the possession simplicitor was also made unlawful by virtue of Section 13 of the Prohibition Act, which under notification dated 05.04.2016 was not an offence since Section 18(2) and 19(1) of the Act, 1915 was not repealed.

17. It is further submitted that charges against the petitioner were framed by order dated 01.04.2017 under Sections 47(a), 48, 53(c), 54 and 63 of the Bihar Excise Act, 1915.

18. Learned counsel for the petitioner submits that though charges were framed on 01.04.2017 but by that time Bihar Excise Act, 1915 was repealed by the Prohibition Act, 2016 which came in force on 02.10.2016 and was made applicable to all pending proceedings in view of Section 98 of the Prohibition Act, since the provision of Prohibition Act, 2016 was severe, as such, Sections 30, 32 and 37 of the Prohibition Act, 2016 was amended by the Bihar Prohibition and Excise (Amendment) Act, 2018 and was made applicable to all pending cases.

19. Learned counsel further submits that by virtue of amended Section 30 of the Prohibition Act which corresponds to Section 47 of the repealed Act, the punishment was reduced from life imprisonment to a minimum of five years for the first offence and fine of Rs.1 lakh and explanation of the word under Section 30 of the Prohibition Act was also repealed. Further, Section 32 of the Prohibition Act, 2016 which corresponds to Section 48 of the repealed Act was also amended

and the deemed possession and knowledge of the accused owner of the premise and also of the family members above 18 years was deleted, besides presumption. Further Section 37 of the amended Prohibition Act corresponding to Section 53 of the Bihar Excise Act, 1915 also curtailed the punishment for committing of an offence under the Act and consumption was made punishable with fine of Rs.5 lakh and in other cases the punishment was reduced from minimum of 10 years to 5 years and maximum of 10 years from life imprisonment.

20. Learned counsel for the petitioner, thus, submits that in view of the developments which took place in the Excise Law and with coming into force of the Bihar Prohibition and Excise (Amendment) Act, 2018 made effective from 30.07.2018 and also made applicable to all pending cases, the petitioner could not be made an accused on the principles of deemed possession and presumed offender under Section 48 of the Bihar Excise Act, unless based on investigation, it is alleged that the offence was being committed with the knowledge of the accused persons. It is further submitted that in view of the amended law which has been made applicable to all pending cases the petitioner cannot be made an accused solely on the ground that he happened to be occupant of the premises on the concept of vicarious liability which has been done away in view of the amendment as recorded hereinabove.

21. Learned counsel for the petitioner next submits that though in the FIR, the petitioner was made an accused but the house in question from where the alleged liquor was recovered belonged to his mother, namely, Manorma Devi. It is submitted that since the house belonged to Manorma Devi, as such, subsequently she was also made an accused in Rampur P.S. Case No. 131 of 2016. It is further submitted that the said Manorma Devi approached this Court by filing Cr. Misc. No. 55130 of 2019 against the order dated 01.04.2017 by which charges were framed against her also. Learned counsel, thereafter, draws the attention of the Court to Annexure-8 to this application to submit that the case of Manorma Devi was quashed by a learned Coordinate Bench of this Court by order dated 23.09.2019. Thereafter, the learned counsel draws the attention of the Court to para 14 of the order dated 23.09.2019 in Cr. Misc. No. 55130 of 2019 wherein it is recorded:-

"On careful consideration of the material available on the record and discussions made above, it is evident that the offences for which charge has been ordered to be framed were apparently not an offence on the date of occurrence nor the recovery of liquor was made from the conscious possession of any of the accused who were sent up for trial. Furthermore, the presumption of involvement in commission of offence drawn against the owner of the premise in the Old Act was diluted by the amendment of 2018.

22. Learned counsel for the petitioner, thus, submits that in the present case also the facts are identical, as such, the Court should interfere.

23. Learned counsel for the petitioner next relies on a judgment of the Hon'ble Supreme Court in the case of Salib @ Shalu @ Salim vs. State of U.P. & Ors. reported in 2023(3) PLJR 389 (SC) and draws the attention of the Court to para 26 of the judgment which reads as under:-

"26. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged."

24. Learned counsel for the petitioner taking cue from the judgment of the Hon'ble Supreme Court submits that if the Court comes to a conclusion that a criminal proceeding for reasons to be recorded requires interference in that event the Court can interfere irrespective of the stage of the case.

25. Mr. Rabindra Kumar, learned A.P.P. for the State opposes this application.

26. Considering the submissions made by the learned counsel for the petitioner and also considering the order dated 23.09.2019 in Cr. Misc. No. 55130 of 2019, the Court comes to a considered conclusion that the case requires interference and, as such, the order dated 01.04.2017, passed by the learned Additional Sessions Judge-V-cum-Special Judge, Gaya, in Sessions Trial No. 01 of 2017 arising out of Rampur P.S. Case No. 131 of 2016, whereby charges have been

framed against the petitioner, under Sections 47(a), 48, 53(c), 54 and 63 of the Bihar Excise Act, 1915, is hereby quashed.

27. Accordingly, this application stands allowed.