
(2010) 11 PAT CK 0106

In the Patna High Court

Case No : Criminal Miscellaneous No. 39130 of 2007

Manoj Kumar Choudhary

APPELLANT

Vs

The State of Bihar and Sub Inspector of Excise

RESPONDENT

Date of Decision : 18-11-2010

Acts Referred:

Bihar and Orissa Excise Act, 1915 — Section 2(12), 47, 47(A)
Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2010) 11 PAT CK 0106

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Kumar, J.—The sole petitioner while invoking inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure has prayed for quashing an order dated 19.12.2006 passed by Sub-Divisional Judicial Magistrate, Dalsingsarai at Samastipur. By the said order the learned Magistrate has taken cognizance of offence u/s 47 (A) (f) of the Bihar Excise Act passed in Excise Case No. 09 of 2006, Trial No. 976 of 2007.

2. Short fact of this case is that a raid was conducted in the premises of the petitioner where certain intoxicant/materials were found and thereafter a seizure list was prepared. It was found that the petitioner along with other persons was involved in manufacturing illegal liquor. A seizure list was prepared and thereafter seized article was sent for its examination. Subsequently a report was received indicating that the seized articles were liquor containing 63% of alcohol. After submission of the report, the learned Magistrate examined the same and took cognizance of the offence which is under challenge.

3. Sri Suraj Narayan Prasad Sinha, learned senior advocate appearing on behalf of the petitioner while challenging the order of cognizance at the very outset has submitted that the petitioner was a licensee under the Drugs and Cosmetics Act for the purposes of preparing Homeopathic medicine and, as such the seized

articles were being used by the petitioner for the purposes of preparing Homeopathic medicine. Learned senior counsel has referred to Annexure-2 to the petition which is a copy of the licence issued in favour of M/s Prince Hannemoon Laboratory, Dalsingsarai, Samastipur under the Drugs and Cosmetics Act. It was submitted that about 56 types of medicines were being prepared by the petitioner pursuant to the licence granted by the Chief Licensing Authority and State Drugs Controller, Bihar, Patna. It has further been submitted that despite the fact that number of articles were seized by the Excise Official, only one item was sent for its examination i.e. Director Special. According to Shri Suraj Narayan Prasad Sinha, the actual name of "Director Special" the "Homeopathi Doctors Special" and the seizing department had named as "Director Special." Learned senior counsel has submitted that since the petitioner was a licensee under the Drugs and Cosmetics Act the excise officials were having no authority either to conduct search or seize any article from the premises of the petitioner.

4. Learned Counsel for the petitioner has also submitted that as per Section 2 (12) (a) of the Bihar Excise Act, the seized articles cannot be construed as intoxicant for the purposes of application of Section 47 of the Excise Act. It was submitted that only Drug Inspector was competent to conduct search and seizure in the premises of the petitioner and after seizure the seized articles were required to be got examined by the Drug Specialist and not by specialist of the Excise Department. It has also been submitted that the seized articles were only raw-materials and as such the petitioner was not liable to be prosecuted under the Excise Act. Accordingly, it has been prayed to set aside the impugned order.

5. In this case a counter affidavit has also been filed on behalf of opposite party Nos. 1 and 2. Shri Jharkhandi Upadhaya, Additional Public Prosecutor appearing on behalf of the State referred to Annexure-A to its counter affidavit which shows that in the garb of preparing Homeopathic medicine, the petitioner was involved in preparing the illegal liquor after illegally importing the spirit. It has further been submitted that the seizure list indicates, which is at page 15 of the counter affidavit running page 47, that number of bottles of 180 ml. and 375 ml. were recovered which were filled up with 8.490 liters coloured liquor. It has further been submitted by referring to Annexure-1 to the petition that in the search about 80 liters of alcohol were recovered from the premises in question besides other materials. Learned Additional Public Prosecutor has also referred to page 17 of the counter affidavit, running page 49, which is the report of the chemical expert of the Excise Department which shows that content of the Doctors Special Tonic was liquor and containing 63% of the alcohol. Accordingly, it has been submitted that content which was found by the expert was intoxicant and it has also been submitted that the petitioner was earlier also made accused for violation of provisions of the Excise Act. It has been submitted that the petition has no got merit and is liable to be rejected.

6. Besides hearing learned Counsel for the parties, have also perused the materials available on record. By the impugned order, learned Magistrate has

taken cognizance of the offence on the basis of report submitted by the Excise Department. Learned Magistrate while taking cognizance has also perused the report of the expert which suggests that the seized article was liquor. At this stage it is not advisable for this Court to examine the matter in detail which is required to be examined by the concerned court. The court is of the opinion that the petitioner has not made out an exceptional case warranting exercise of power u/s 482 of the Code of Criminal Procedure in his favour. Accordingly the petition stands rejected.

7. In this case earlier Lower Court Record was called for which is on the records of this case. In view of the rejection of this petition, the office is directed to remit back the Lower Court Record along with a copy of this order. It is made clear that the learned court below will not be prejudiced by the order of this Court.