(2023) 12 PAT CK 0074

In the Patna High Court

Case No : Criminal Miscellaneous No. 58959 Of 2023

Rahul Kumar Banjara APPELLANT

Vs

State Of Bihar RESPONDENT

Date of Decision : 20-12-2023

Acts Referred:

Bihar Prohibition and Excise Act, 2016 — Section 30(a), 32, 76(2), 98
Bihar Prohibition and Excise (Amendment) Act, 2018 — Section 30(a)

Citation : (2023) 12 PAT CK 0074

Hon'ble Judges : Satyavrat Verma, J

Bench : Single Bench

Advocate : Anurag Saurav, Abhinav Alok, Priyajeet Pandey, Abhishek Kumar, Jharkhandi Upadhyay

Final Decision : Allowed

Judgement

1. The counter affidavit filed on behalf of the Deputy Commissioner, Excise, Patna, Bihar is taken on record.

2. Heard learned counsel for the petitioner and Mr. Jharkhandi Upadhyay learned A.P.P. for the State.

3. Learned counsel for the petitioner submits that whenever any case under the Excise Act is instituted, the police and the excise official in a mechanical manner investigate. It is further submitted that petitioner is an old lady, aged about 80 years and is a Doctorate in English and has served as a Professor in English at the University College of Arts and Commerce, Calcutta University, for about 18 years prior to her superannuation from service in the year 2007. It is next submitted that the daughter of the petitioner is also a Doctorate in English from Oxford University and is presently employed with Oxford University Press at Oxford, United Kingdom and the son of the petitioner is a Senior Central Government Counsel and is practicing Advocate of the Hon’ble High Court at Calcutta for the last 25 years.

4. Learned counsel for the petitioner further submits that the aforesaid submission has been made only to bring to the notice of the Court that petitioner is a respectable lady and it cannot be fathomed that she was indulging in illegal liquor trade. Learned counsel next draws the attention of the Court to an order dated 19.12.2019 passed in Cr. Misc. No. 84442 of 2019 (Mahesh Yadav Vs. The State of Bihar) to submit that Mahesh Yadav was arrested in Complaint Case No. 214(O) of 2019 (CIS Excise No. 1207 of 2019) registered for the offence under Section 30(a) of the Bihar Prohibition and Excise Act, 2016 in which the petitioner is also an accused. It is next submitted that this Court while granting bail to Mahesh Yadav by order dated 19.12.2019 had recorded "Keeping in view the provisions of the special enactment i.e. Bihar Prohibition and Excise Act, 2016, this Court is of the considered view that petitioner has made out a case for grant of bail. Possibility of false implication as is so alleged by the petitioner cannot be ruled out. Also, thus far save and except for naming the petitioner in the F.I.R., no evidence corroborative in nature stands recorded by the police. Also, none has come forward to highlight the possible involvement of the petitioner (Mahesh Yadav) in the crime. On what basis the Investigating Officer could link the accused to the crime is also not emanating from the record."

5. Learned counsel thus submits that petitioner in the same manner has been implicated in the present case. It is further submitted that the aforesaid complaint case was instituted by the Excise Officials alleging that 137.85 litres of illicit liquor was recovered from the Dickey of a car. It is next submitted that petitioner being owner of the vehicle, which was seized in the occurrence, came to be implicated. It is further submitted that the petitioner had sold the said vehicle to a dealer of vehicle, namely, M/s Bagaria Motors Pvt. Ltd. on 27.10.2017.

6. Learned counsel for the petitioner further submits that the car was sold to the dealer in exchange for a new Renault Kwid Car which was registered in the name of the petitioner having registration no. WB-02-AL9838 and the sale value of the seized vehicle was duly adjusted by the said dealer against the price of the new car.

7. Learned counsel next asserts and submits that while handing over possession of the seized car to the said dealer, the petitioner had also handed over the duly signed and executed Form 29 and Form 30 as provided under the Motor Vehicles Act, 1988 and the dealer handed over a Delivery Note to the petitioner while taking possession of the said car.

8. Learned counsel for the petitioner next submits that when the petitioner came to know that she has been falsely implicated in the present case on the ground that the seized vehicle belongs to her, she filed a writ petition before the Hon'ble Calcutta High Court being WPA No. 9338 of 2023 seeking a declaration that the petitioner is not the owner of the seized vehicle. It is further submitted that the Hon'ble Calcutta High Court by order dated 19.04.2023 (Annexure-14 to the quashing application) held that the petitioner is entitled to a declaration that she

has ceased to be a registered owner of the said vehicle on and from 27.10.2017 and further directed that no coercive steps be taken against the petitioner in connection with any violation that may have occurred in respect of the said vehicle on and from 27.10.2017.

9. Learned counsel for the petitioner thus submits that this shows the face of the administration of Bihar that how innocent people are being implicated in the name of the Excise Law.

10. Learned counsel for the petitioner submits that the police and the excise officials in their zeal to implicate people without properly investigating the case do not realize the trauma a citizen has to face when he or she is implicated in a false criminal case.

11. Learned counsel further submits that there is no mechanism in the Code of Criminal Procedure to compensate an accused and the advantage of the same is being taken by the officials especially of the excise department. It is next submitted that the officials while investigating the cases relating to the Excise Law are preparing case diary and the investigation report sitting in their official chamber without even making any endeavour to investigate the case properly. Learned counsel, thus, submits that the ordeal of a lady, aged about 80 years, being implicated in a criminal case can well be imagined but then the officials of the State of Bihar while dealing with offence relating to liquor are oblivious of this fact.

12. Learned counsel for the petitioner submits that it appears that the police and the excise officials are oblivious of the Excise Law or have not read the law in its correct perspective. Learned counsel further submits that initially when the Excise Law was enacted, the presumption of committing an offence under the Excise Law was against the accused person but the Legislature realizing the rigours of the law amended the Excise Law by Bihar Prohibition and Excise (Amendment) Act, 2018 and the same was notified and made effective from 30.07.2018 and was made applicable to all pending cases, as Section 98 of the Prohibition Act contains repeal and saving clause which provides 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 provision 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 provision of the Act so repealed shall be construed as references to the corresponding provisions of this Act.

13. Learned counsel thus submits that in sum and substance the pending proceedings under the Act was saved as per Section 98 of the Prohibition Act. It is further submitted that 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 person.

14. Learned counsel thus submits that when presumption of guilt and concept of deemed offender has been done away with coming into force of the Prohibition and Excise (Amendment) Act, 2018 w.e.f. 30.07.2018 then where was the occasion for the excise official who investigated the case to presume that the petitioner being owner of the case is a deemed offender, rather the excise official ought to have investigated the case in its correct perspective to arrive at a conclusion with regard to the involvement of the petitioner in the offence.

15. Learned counsel for the petitioner submits that in compliance of the order of this Court dated 18.10.2023, the Superintendent of Police, Buxar had filed a counter affidavit and draws the attention of the Court to para 36 of the counter affidavit and submits that a stand was taken by the Superintendent of Police, Buxar that the present application is not maintainable in view of the bar under Section 76(2) of the Excise Act as an offence is made out, on the ground that Section 32 of the Act deals with presumption with regard to the commission of an offence and the presumption is that the owner of the vehicle is also involved unless proved otherwise. It was thus pleaded that for proving it otherwise at the stage of the trial, but for the present, as prima facie, an offence is made out under the Act, the bar under Section 76(2) of the Act shall apply to the arrest of any person on an accusation of having committed an offence under the Act and for that proposition relied on an order of this Court dated 02.06.2021 in Cr. Misc. No. 10240 of 2021 (Birendar Choudhari Vs. The State of Bihar) (Annexure-O. P/C to the counter affidavit).

16. Learned counsel thus submits that this reflects the mind set of the police officials while dealing with the Excise Law. It appears that they implicate innocent person without understanding the law. It is further submitted that the present complaint case was instituted on 06.11.2019 and 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 and the amended Section 32 of the Prohibition Act was done away with the concept of deemed offender and presumption of guilt against the accused person.

17. Learned counsel thus submits that when the Excise (Amendment) Act, 2018 was made effective from 30.07.2018, as such, the presumption of guilt and concept of deemed offender could not have been applied in the present case which was instituted in the year 2019.

18. Learned counsel reiterates his submission and submits that the Superintendent of Police, Buxar should be strictured for filing an affidavit before this Court without knowing the law in its correct perspective. The Court refrains from entertaining this submission of the learned counsel for the petitioner in the present case, leaving it open to consider such an issue if it comes to the notice of the Court later in some different case.

19. Mr. Jharkhandi Upadhyay, learned A.P.P. for the State vehemently opposes the submissions of the learned counsel for the petitioner but is not in a position to rebut the submissions of the learned counsel for the petitioner that the concept of deemed offender and presumption of guilt has been done away with and the submissions made by the learned counsel for the petitioner as recorded hereinabove.

20. Learned A.P.P. also submits that in compliance of the order dated 04.12.2023 a counter affidavit has also been filed on behalf of the Deputy Commissioner, Excise, Patna, Bihar and in the counter affidavit at para 11 it has been pleaded that vide letter no. 7661 dated 06.12.2023, Excise Superintendent, Buxar has been instructed to show cause Sanjay Kumar Priyadarsi, Excise Sub-Inspector, Buxar (I.O. in the present case) and seek clarification on this issue and on the basis of such clarification, the department will proceed and take action accordingly.

21. The Court is satisfied with what has been pleaded in para 11 of the counter affidavit filed on behalf of the Deputy Commissioner, Excise, Patna, Bihar but then the issue which remains to be brought to the notice of the official of the police and the excise department is that the concept of deemed offender and presumption of guilt against the accused has been done away with and if any allegation is alleged against an accused with respect to an offence relating to the Excise Law in that event the allegations are to be investigated first, had the I.O. of the case investigated the present case in its correct perspective the order of the Hon'ble Calcutta High Court would have been brought to his notice and the matter would have ended but then as recorded hereinabove the authorities in their zeal to prove their merit with respect to the excise cases are at times acting in a manner which is uncalled for and definitely does not reflect good impression about the State.

22. Considering the submissions made by the learned counsel for the petitioner and taking into account the submissions recorded hereinabove, the order dated 09.03.2022 passed by the learned Special Judge, Exclusive Excise Special Court No. II, Buxar, whereby cognizance of the offence under Section 30(a) of the Bihar Prohibition and Excise (Amendment) Act, 2018 has been taken against the petitioner, is hereby quashed.

23. Accordingly, the present application is allowed.

24. Let a copy of this order be sent to the Chief Secretary, Government of Bihar and the Director General of Police, Bihar for their perusal.

25. The Court expects that what has been pleaded in the counter affidavit of the Deputy Commissioner, Excise, Patna, Bihar at para 11 of his counter affidavit shall be taken to its logical conclusion.