# IN THE HIGH COURT OF JUDICATURE AT PATNA

**Criminal Writ Jurisdiction Case No.750 of 2019**

Arising Out of PS. Case No.-167 Year-2018 Thana- BAIRIYA District- West Champaran

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Vicky Kumar, Son of late Kali Prasad, Resident of Mohalla-Ellamram Chowk, P.S-Bettiah Town, District-West Champaran.

... ... Petitioner

Versus

1. The Principal Secretary, Department of Excise, Government of Bihar, Patna
2. The Director General of Police, Bihar, Patna.
3. The Deputy Inspector General of Police, Muzaffarpur.
4. The Superintendent of Police, West Champaran, Bettiah.
5. The Deputy Superintendent of Police, Sadar, District-West Champaran, Bettiah.
6. The Officer-in-Charge, Bairiya Police Station, District-West Champaran.

... ... Respondents

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**Appearance :**

For the Petitioner/s : Mr. Ashok Kumar Gupta, Advocate

For the Respondent/s : Mr. Kumar Manish, SC-5

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**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH**

**ORAL JUDGMENT**

**Date : 29-04-2019**

This application under Articles 226 and 227 of the Constitution of India has been field by the petitioner for setting aside the First Information Report (for short 'FIR') of Bairiya P.S. Case No.167 of 2018 registered under Section 30(a) of the Bihar Prohibition and Excise Act, 2016 (for short 'Excise Act') and sections 272 and 273 of the Indian Penal Code.

2. It is submitted by the learned counsel for the petitioner that the name of the petitioner has been given in the FIR merely on suspicion. The petitioner was not caught at the spot.

There is no material to connect him with the alleged offence. In absence of any cogent material to show that the petitioner was either manufacturing, possessing, buying, selling, distributing, collecting, importing, exporting, transporting or removing any intoxicant or liquor, he could not have been made an accused in a case under Section 30(a) of the Excise Act.

3. *Per contra,* learned counsel appearing for the State submitted that the FIR has been instituted on the basis of a confidential information that the petitioner and others were carrying huge quantity of illicit liquor in a Maruti van. On such information, the police intercepted the vehicle in question, but the occupants of the Maruti van managed to run away. On search of the van, huge quantity of illicit liquor was recovered. He contended that the allegations made in the FIR coupled with the recovery of the huge quantity of liquor would certainly constitute an offence under Section 30(a) of the Excise Act. The offence being cognizable, no illegality can be found with the action of the police in registering the case against the petitioner and investigating the same.

4. Having heard the parties and perused the FIR, as contained in Annexure-1 to the present application, I find that there is a definite allegation of involvement of the petitioner in the

alleged trade of illicit liquor. On the basis of secret information received by the police the van in question was intercepted. Though, the occupants of the van, including the petitioner, managed to escape, six cartons of Royal Stag wine containing 232 pcs. each of 180 ml. were recovered by the police from the Maruti van.

5. There is complete prohibition of liquor and intoxicant in the State of Bihar. The Excise Act has been enacted for enforcing, implementing and promoting complete prohibition of liquor and intoxicants.

6. The FIR has been registered under Section 30(a) of the Excise Act. Section 30 of the Excise Act reads as under:-

> **30. Penalty for unlawful import, export, transport, manufacture, possession, sale, etc.-** Whoever, in contravention of provision of this Act or of any rule or order made or notification issued under this Act or in contravention of any condition of any license or permit or pass, renewed under this Act or without a valid license, permit or pass issued under this Act-
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> (*a*) manufactures, possesses, buys, sells, distributes, collects, bottles, imports, exports, transports or removes any intoxicant or liquor; or
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> (*b*) cultivates any hemp plant; or

(*c*) constructs or establishes or works any manufactory, distillery, brewery or warehouse; or

(*d*) uses, keeps or has in his possession any material, still, utensil, implement or apparatus, or premises, whatsoever, for the purpose of manufacturing any intoxicant or liquor; or

***Explanation*****-** The word 'material' means any material, and includes any food or non food item, that may be used for preparing any liquor or intoxicant.

(*e*) possesses any material or film either with or without the State Government logo or logo of any State or wrapper or any other thing in which liquor or intoxicant can be packed or any apparatus or implement or machine for the purpose of packing any liquor or intoxicant; or

(*f*) removes any liquor or intoxicant from any distillery, brewery, warehouse, other place of storage licensed, established, authorized or continued under this Act; or

(*g*) manufactures, possesses, sells, distributes, bottles, imports, exports, transports or removes, any preparation or ingredient made with or without the use of any intoxicant or liquor, which can serve as an alcohol or a substitute for alcohol and is used or likely to be used or consumed for the purposes of getting intoxicated, shall be punishable with imprisonment for a term not less than ten years but which may extend to imprisonment for life and with fine which shall not be less than one lakh rupees but which may extend to ten lakh rupees."

7. From a reading of the provisions of Section 30(a) of the Excise Act, it would be manifest that whoever, in contravention of the provisions of the Act manufactures, possesses, buys, sells, distributes, collects, bottles, imports, exports, transports or removes any intoxicant or liquor would be liable for punishment with imprisonment for a term of not less than ten years but which may extend to imprisonment for life and with fine which shall not be less than one lakh rupees but which may extend to ten lakh rupees.

8. Since the allegations made in the FIR would clearly attract the ingredients of Section 30(a) of the Excise Act, the action of the police in instituting a case against the petitioner cannot be held to be unjustified.

9. In that view of the matter, the application is dismissed.

**(Ashwani Kumar Singh, J.)**

Sanjeet/-

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| **AFR/NAFR** | NAFR |
| **CAV DATE** | NA |
| **Uploading Date** | 04.05.2019 |
| **Transmission Date** | 04.05.2019 |