IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.60367 of 2018

Arising Out of PS. Case No.-61 Year-2018 Thana- PATNA GRP CASE District- Patna

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Akash Kumar S/o Shree Jai Prakash Yadav, R/o Vill./Mohalla- Khajpura, P.S.- Hawai Adda, District- Patna.

... ... Petitioner/s

Versus

The State Of Bihar

... ... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr. Anil Kumar, Advocate
For the Opposite Party/s : Mr. Sucheta Yadav, APP

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CORAM: HONOURABLE MR. JUSTICE PRAVEEN KUMAR
ORAL JUDGMENT
Date : 17-08-2026

Heard learned counsel for the petitioner and learned counsel for the State.

2. The petitioner has challenged the order taking cognizance dated 27.03.2018, passed in connection with Rail Patna Jn. P.S. Case No. 61 of 2018, whereby cognizance has been taken against the petitioner for the offences punishable under Sections 273 of the Indian Penal Code and 30(a) of Bihar Excise Amendment Act.

3. The case of the prosecution, in brief, is that on 27.02.2018 at about 06:30 hours, the informant, Awadhesh Kumar Sharma, along with other police personnel, was on patrolling duty at the railway platforms. During the course of patrolling, at around 07:00 hours on Platform No. 2/3, Duronto Express arrived and halted at Platform No. 3, while passengers were deboarding the

train, one individual was spotted moving suspiciously towards the central foot-over-bridge staircase carrying a red bag. Upon seeing, the police party, he tried to escape, on chase he was intercepted and apprehended. On being questioned regarding the contents of the red bag, he failed to provide any satisfactory explanation. Thereafter, in the presence of two independent seizure witnesses, namely, Aditya Paswan and Raj Kumar Paswan, a search of the red bag was conducted, which led to the recovery of a total of six one-litre bottles of foreign liquor (Scotch whisky) as under:

(i) Two (2) sealed bottles of 100 Pipers Deluxe Blended Scotch Whisky;

(ii) Two (2) sealed bottles of VAT 69 Blended Scotch Whisky; and

(iii) Two (2) sealed bottles of Johnnie Walker Red Label Blended Scotch Whisky.

A seizure list was duly prepared on the spot and signed by the petitioner as well as both independent witnesses, and a copy thereof was handed over to the petitioner. Upon sustained interrogation, the petitioner disclosed that he had brought the illicit liquor from Shalimar Railway Station for delivery at Patna Junction, whereupon he was formally arrested by the police party.

4. Learned counsel for the petitioner has submitted that the search and seizure is in violation of Section 73(e) of the Bihar Prohibition and Excise Act, 2016, the said provision being amended by Section 2 of the Bihar Prohibition and Excise Amendment and Validation Act, 2020, wherein, the word 'Sub Inspector' has been substituted by 'Assistant Sub Inspector' and as per the Bihar Prohibition and Excise Amendment and Validation Act, 2020, was to come in force from 02.10.2016. It has further been submitted that the search and seizure has been made by Assistant Sub Inspector of police. It has further been submitted that the search and seizure is in violation of Section 100 Cr.P.C. It has further been submitted that there are inconsistencies in the statement of witnesses to search and seizure and the case of the prosecution as well as search and seizure does not inspire confidence. It has further been submitted that when the provisions as regards the search and seizure provided under the Excise Act is not followed with, the entire case against the petitioner vitiates and would not be made out against him. Learned counsel for the petitioner has also relied upon the judgments of the Division Bench of this Court reported in 14.01.2020 as well as 24.01.2020 passed in CWJC No. 382 of 2020 **(Marsingh Sahni vs. State of Bihar and Ors.)** and 18067 of 2019 **(Ram Kishor Singh vs. State**

of Bihar and Ors.), wherein submissions were advanced that Section 73(e) of the Bihar Prohibition and Excise Act, 2016, stipulates that the seizure cannot be made by the officer below the rank of Sub Inspector police, hence, the seizure appears to be de hors the provisions of the Act. It has further been submitted that the charge-sheet has been filed after a delay of seven days beyond the statutory provision and, therefore, the cognizance is bad in law.

5. Learned counsel for the State opposed the prayer of the petitioner.

6. Heard the learned counsel for the parties and perused the records.

7. Perusal of Section 73(e) of the Act goes to show that the word ‘may’ is prescribed and it has not been made mandatory by insertion of word ‘shall’, the same was the position, when by Section 2 of Bihar Prohibition and Excise (Amendment and Validation Act, 2020), amendment with respect to provision under Section 73(e) was made but the word may still remained. Further, the submission with regard to inconsistencies of the statement of witnesses are concerned, they are matter of defence, which can be considered at the appropriate, whereas, as regards the submission of charge-sheet beyond the statutory period, the same does not vitiate the trial and the cognizance cannot be held to be bad in law

or barred by any existing laws. As far as the judgments cited by learned counsel for the petitioner is concerned, the said was with regard to release of the vehicle and in the said judgments it has been observed that the Court was not expressing any opinion with regard to the merits of the case. The *mala fide* as submitted, referring to the judgment of **State of *Haryana Vs. Bhajanlal*** reported in ***1992 Supp (1) SCC 335,*** the same can only be considered at the time of defence when the recovery was made from the conscious possession of the petitioner. There are *prima facie* materials against the petitioner to constitute the offences under which the cognizance has been taken.

8. The impugned order taking cognizance does not require any interference.

9. The present application is devoid of merits and is accordingly dismissed.

(Praveen Kumar, J)

Abdus/-

AFR/NAFR	NAFR
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