
(2006) 07 JH CK 0033

Jharkhand High Court

Case No: None

Amarendra Tiwari and Another

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision: July 21, 2006

Acts Referred:

- Bihar and Orissa Excise Act, 1915 - Section 47A

Citation: (2007) 3 JCR 139

Hon'ble Judges: Amareshwar Sahay, J

Bench: Single Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Amareshwar Sahay, J.

Heard.

2. The prayer of the petitioners in this application is for quashing the entire criminal proceedings initiated against them in Jamtara (Mihijam) Police Station Case No. 122 of 2003, and also for quashing of the order dated 30.9.2003 passed by the Chief Judicial Magistrate, Jamtara whereby, the cognizance for the offence u/s 47-A of the Bihar Excise Act was taken against the petitioners.

3. The facts in brief are that on 19.7.2003, the police on secret information that the illegal sale of country liquor was being made, raided various places and recovered illegal liquor. In the course, the police raided one Hotel namely Indrapuri Hotel from where, they recovered 40 packets of country made liquor on which Jharkhand Excise was printed, 20 empty bottles of Beer, 200 empty pouch of country liquor and 20 empty bottles of foreign liquor from the possession of the owner of the Hotel namely Arup Kumar Ghosh who disclosed that since last several months, he was purchasing foreign liquors from the shop of Amarendra Tiwari (Petitioner No. 1) and

he used to serve the same to his customers. In the said shop of Amarendra Tiwari, Shankar Ghosh (Petitioner No. 2) was working as a Salesman from where foreign liquor was purchased. So far as the countrymade liquor was concerned, Arup Kumar Ghosh stated that he used to purchase it from Munnazerul Hassan @ Munna.

4. The Police after investigation submitted charge-sheet against Shankar Ghosh (Petitioner No. 2) and others whereas, against the petitioner No. 1, no charge-sheet was submitted.

5. Learned Chief Judicial Magistrate, by impugned Order dated 30.1.2003 took cognizance of the offence u/s 47(A) of the Bihar Excise Act against both the petitioners differing from the final report submitted by the Police in favour of the petitioner No. 1.

6. It is stated that the petitioner No. 1 is no doubt a retail dealer of foreign liquor from which, the other accused Arup Kumar Ghosh used to purchase foreign liquors but in fact, the petitioner No. 1 Amarendra Tiwari is a licensee dealer of foreign liquor having License No. 5/2003-2004 and he did not violate any of the terms and conditions of the license granted to him for dealership of foreign liquor. The alleged recovery of empty bottles of foreign liquor etc., as noticed above, was admittedly not recovered from the possession of the petitioner.

7. It is further stated by the learned Counsel for the petitioners that from the Case Diary also, it appears that the police found the petitioner No. 1 being a License Holder of retail dealership of foreign liquor and therefore, if the petitioner sold any foreign liquor to Arup Kumar Ghosh, as alleged by him, he had not committed any offence whatsoever.

8. In order to verify the facts and submissions stated by the learned Counsel for the petitioner, the Case Diary was called for which has been received.

9. Learned G.P.-II who appears for the State submits that except the statements made in paragraph-58 of the Case Diary, there is no materials against the petitioner in the Case Diary.

10. I have perused paragraph 58 of the Case Diary where the statements of the accused Arup Kumar Ghosh has been recorded which only speaks that he purchased foreign liquor from the shop of the petitioner. Since the petitioner was a licensee and had a legal and valid right to sell foreign liquor from his shop and therefore, in my view, no offence whatsoever was committed by the petitioner No, 1. Petitioner No. 2 being a Salesman of the Petitioner No. 1 had sold those foreign liquors and that it cannot be said that he had committed any offence u/s 47A of the Bihar Excise Act.

11. In this view of the discussions and findings above, I hold that the prosecution of the petitioner as well as the cognizance against them for the offence u/s 47A of the Bihar Excise Act is absolutely an abuse to the process of the Court.

12. Accordingly, this application is allowed. The entire criminal proceedings initiated against the petitioners in Jamtara (Mihijam) Police State Case No. 122 of 2003 and the order dated 30.9.2003 passed by the Chief Judicial Magistrate, Jamtara whereby, the cognizance for the offence u/s 47A of the Bihar Excise Act was taken against the petitioners are hereby quashed.