

Cr. Revision No.368 of 1998(R)

[In the matter of an application under Sections 397 and 401 of the Cr.P.C]

Shailesh Prasad Srivastava

Petitioner

-Versus-

The State of Bihar (now Jharkhand)

opposite party.

For the Petitioner

:

Mr. V. Shivnath, Sr. Advocate

For the State

:

Mr. Amaresh Kumar, APP

P R E S E N T

HON'BLE MR. JUSTICE H.C. MISHRA

By Court: Heard learned counsel for the petitioner and learned counsel for the State.

2. Petitioner is aggrieved by the order dated 19.9.98 passed by the learned A.C.J.M., Simdega, in Simdega P.S. Case No.25 of 97, corresponding to G.R. No.61 of 97, whereby the application filed by the petitioner under Section 239 of the Cr.P.C., for discharge, has been rejected by the Court below, stating that there are sufficient materials for framing the charge against the petitioner and the co-accused under Sections 290 and 414 of the Indian Penal code.

3. This case was admitted by order dated 28.4.99 and the further proceedings in the Court was stayed. The FIR shows that a raid was conducted in the shop of the petitioner, from where some cartoons of foreign liquor and bottles of country liquor were recovered. Prior to that, raid had been conducted in the hotel of the co-accused, where liquor was being served to the customers, and on the disclosure made by the apprehended co-accused, raid was conducted in the shop of the petitioner. The seizure was made and the case was instituted against the petitioner and the other co-accused persons for the offences under Sections 290, 414 of Indian Penal Code and under Section 47(A) of the Excise Act. So far as this petitioner is concerned, it is apparent from the FIR that the petitioner was not present at the shop and there is no signature of the petitioner in the seizure list.

4. It appears from the impugned order, as also the order dated 5.5.1997 passed by the Court below that no cognizance was taken against the petitioner for the offence under the Excise Act, rather the cognizance has been taken only under Section 290 and 414 of the IPC. Subsequently, the petitioner and the co-accused filed application for discharge, which was dismissed by the impugned order dated 19.9.98 passed by the learned A.C.J.M., Simdega, stating that there are materials for framing charge for the offences under Sections 290 and 414 of the IPC.

5. Learned counsel for the petitioner has submitted that the impugned order passed by the Court below is absolutely illegal, in as much as, there is no allegation in the entire FIR of assisting in concealment of any stolen property and accordingly, no offence can be said to be made out under Section 414 of the IPC. It has also been submitted that petitioner is the license holder and was running the shop under the valid

license, and as such, it cannot be said that the petitioner had committed the offence of public nuisance and accordingly, the offence under Section 290 IPC also cannot be said to be made out against the petitioner. Learned counsel accordingly, submitted that the impugned order passed by the Court below cannot be sustained in the eyes of law, particularly when no cognizance was taken under Section 47(A) of the Excise Act.

6. Learned counsel for the State on the other hand has opposed the prayer and has submitted that cartoons of foreign liquor as well as bottles of country liquor have been recovered from the shop of the petitioner and accordingly, there is no illegality in the impugned order passed by the Court below.

7. After having heard learned counsels for both the sides and upon going through the record, I find from the FIR that there is no allegation against the petitioner of committing any public nuisance or of assisting in concealment of any stolen property. As such, I am of the considered view that offence under Section 290 IPC or under Section 414 IPC cannot be said to be made out against the petitioner, sans the offence under Section 47(A) of the Excise Act.

8. In view of the aforementioned discussions, the impugned order dated 19.9.98 passed by learned A.C.J.M., Simdega, in G.R. Case No.61 of 97, arising out of Simdega P.S. Case No.25 of 97, is hereby, set-aside. Consequently, the petitioner stands discharged. This application is accordingly, allowed. Let the Lower Court Record be sent back forthwith.

(H.C. MISHRA, J.)

Jharkhand High Court, Ranchi

Dated 28th February, 2014

R.Kumar/**N.A.F.R.**