

# Rahul Kumar vs The State Of Bihar, Through Principal ... on 9 February, 2022

**Author: Ashutosh Kumar**

**Bench: Ashutosh Kumar**

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.144 of 2021

Arising Out of PS. Case No.-100 Year-2020 Thana- GURARU District- Gaya

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RAHUL KUMAR Son of Sunil Kumar Resident of Kranti Nagar, P.O.-  
Guraru, P.S.- Koch, District - Gaya

... .. Petitioner

Versus

1. The State of Bihar, Through Principal Secretary, Home, Government of Bihar, Old Secretariat, Patna. Bihar
2. The Principal Secretary, Home, Government of Bihar, Old Secretariat, Patna. Bihar
3. The Joint Secretary, Prohibition Excise and Registration Department Government of Bihar, Old Secretariat, Patna, Bihar
4. The Director General of Police, Bihar, Old Secretariat, Patna. Bihar
5. The Superintendent of Police, Gaya. Bihar
6. The Assistant Sub Inspector, (Excise), Tikari Circle, Gaya Bihar
7. The Officer In Charge, Guraru Police Station, Gaya Bihar

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Mrigank Mauli, Sr. Advocate
		Mr. Avinash Shekhar, Advocate
For the Respondent/s	:	Mr. P.K. Verma, AAG

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

Date : 09-02-2022

Heard Mr. Mrigank Mauli, learned Senior Advocate

for the petitioners and Mr. P.K. Verma, learned AAG for

the State.

This writ petition has been filed for quashing of

the entire prosecution emanating out of Guraru P.S. Case

No. 100 of 2020 instituted for the offences under Section

30(a) of the Bihar Prohibition and Excise Act, 2016 (in

short the 'Excise Act 2016') and restraining the respondents from taking any coercive step against the petitioner in pursuance of the aforementioned case.

An additional prayer was made on behalf of the petitioner for unsealing the premises located near the Station Road in front of Punjab National Bank in the district of Gaya.

The prosecution report reveals that in the shop where the petitioner was a salesman, a raid was conducted by the Assistant Sub-Inspector (Excise), Tikari Circle, Gaya and 40 cans of 330 ml of Budwiser/Non-Alcoholic Beer and 88 bottles of 330 ml of Budwiser fruit beer were recovered and seized. The samples were sent for testing and were found to have been containing 0.6% v/v ethyl alcohol.

Hence, the prosecution against the petitioner, as there is complete prohibition in the State of Bihar.

It has been urged on behalf of the petitioner that non-alcoholic drink or a fruit beer would not come within  
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the purview of an intoxicating drink and therefore, the instant prosecution is absolutely misconceived.

The learned counsel for the petitioner drew the

attention of this Court to various provisions of the Excise Act, 2016 especially Sections 13, 30(a) and 30(f) thereof.

This Court, vide order dated 19.03.2021 recorded as follows:

Section 30(f) of the Excise Act, 2016 prohibits manufacture, possession, sell, distribution, bottling, imports, exports, transportation or any preparation or ingredient made with or without the use of any intoxicant or liquor, which would 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.

The expression 'intoxicant' and 'liquor' also has been defined [refer to Section 2(40) and 2(44) of the Excise Act, 2016].

Methyl alcohol is stated to be an intoxicant.

However, any preparation containing methyl alcohol which is not within the permissible limits would come within the category of intoxicant or liquor, which is prohibited. Much emphasis has been laid on the provision contained in Section 30(f) of the Excise Act, 2016, which circumscribes

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the characterization of a drink as an alcohol by a phrase that if it is used or likely to be used for the purposes of getting intoxicated.

It has also been argued that notwithstanding the existence of the provision contained in Section 2(3) of the Excise Act, 2016, which defines an alcoholic drink and states that it means a solution or mixture containing alcohol, being of any strength and purity. Any drink containing methyl alcohol which may be an intoxicating agent, but if it is within the permissible limits, it cannot be characterized as an alcoholic drink.

In support of the aforesaid contention, learned Advocate for the petitioner has drawn the attention of this

Court to the provisions contained in Section 2(4) of the Excise Act, 2016, which defines alcoholic beverage or potable liquor, as meaning any beverage containing alcohol in conformity with the BIS standards which may be intoxicating and is fit for human consumption.

It may not be necessary here to reiterate, it has been argued, that BIS standards is the standard prescribed by the Central Government Authority known as Bureau of Indian Standards.

In the notification dated 19th March, 2018, issued by the Ministry of Health and Family Welfare (Food Safety and Standards Authority of India), alcoholic beverage has been specified to be a liquor or brew containing more than 0.5% ethanol

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and the tolerance limit for such ethyl alcohol content has been kept at  $\pm 0.5$  per cent in case of wines for upto 20 per cent and  $\pm 1.0$  per cent for more than 20 per cent above of the declared strength.

Mr. Sandeep Kumar, learned Advocate, has stated that the consignment for the same source was tested at two different places and at one place, the ethyl alcohol content was found to be 0.4%, whereas in the other consignment, it was found to be 0.6%, which is above than the tolerance limit prescribed by the Bureau of Indian Standards.

Mr. Kumar, learned Advocate, has therefore submitted that assuming that in one of the samples of the consignment was found to contain more than 0.5% ethyl alcohol, the petitioner would still come under the protective cover of the tolerance limit, which prescribes more than 0.5% in case of 20%.

In the aforesaid backdrop, learned counsel for the petitioner has submitted that the entire prosecution is misconceived and it matters not even if the investigation has been concluded and charge-sheet has been submitted.

The learned counsel for the

petitioner has also referred to a Supreme Court decision in case of Anand Kumar Mohatta & Anr. Vs. State (Govt. of NCT of Delhi), Department of Home & Anr. [(2019) 11 SCC 706], which does not prohibit the exercise of jurisdiction by a Court for

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quashing the entire prosecution even in the event of the investigation having been completed.

Be it noted that in this case charge-sheet has

already been submitted but the same has not yet been

acted upon.

It has been urged on behalf of the petitioner that

he is only a salesman of one Sujit Kumar, who had

purchased the products from the distributor on 15.07.2020

. The product has been imported in India and has been tested by Food Safety and Standards Authority of India (FSSAI) in accordance with Food Safety and Standards Act, 2006. The product is a zero percent (0.0%) non-alcoholic beer which was tested by various laboratories across the country and has been certified to be non- alcoholic.

Considering the afore-noted submissions on behalf of the petitioner, this Court by order dated 19.03.2021 had directed for no coercive steps to be taken against the petitioner.

Patna High Court CR. WJC No.144 of 2021 dt.09-02-2022 After having heard the learned counsel for the petitioner and Shri P.K. Verma, learned AAG, it appears that this writ petition is premised on the fact that the non- alcoholic beer which was seized from the shop does not fall under the category of intoxicants.

The sample, so seized, was tested twice by the same laboratory which gave two results. The second report was only marginally above the required percentage.

The terms "liquor and intoxicant" have been separately defined:

Section 2(40) of the Excise Act, 2016 provides that "intoxicant" includes liquor or any preparation, which serves as an alcohol or a substitute for alcohol, which is consumed

for the purpose of getting intoxicated.

The Bureau of Indian Standards (BIS) specifically provides that an alcoholic beverage is one which contains more than 0.5% ethyl alcohol by volume.

The definition of Bureau of Indian Standard in the Act is inclusive of the standards prescribed by any other Patna High Court CR. WJC No.144 of 2021 dt.09-02-2022 Central Government authority constituted under the relevant Act. This, therefore, includes the standards/regulations laid down by Food Safety and Standards Authority of India (FSSAI), a central authority established under the Food Safety and Standards Act.

According to such notification, the tolerance limit of ethyl alcohol content shall be  $\pm 0.3\%$ . The tolerance limit has been prescribed for three different categories of beverages.

S. No. Category of Beverage Tolerance Limit I. For beverage with ethyl alcohol content upto  $\pm 0.3\%$  20% abv II. For beverage with ethyl alcohol content of  $\pm 1.0\%$  more than 20% abv III. For Wines  $\pm 0.5\%$  The non-alcoholic beverage would be covered in the first category.

What has really been harped upon by the learned counsel for the petitioner is that an alcohol may occur naturally in any article of food and beverage. Scientific studies would show that the contents of ethyl alcohol in beverages are likely to change with change in climatic Patna High Court CR. WJC No.144 of 2021 dt.09-02-2022 conditions, temperature, sunlight and other factors and natural processes.

Thus, the alcohol content of a beverage is susceptible to an error of margin.

With respect to the second report of the Chemical Examiner, it has been urged that no rules have been framed under the Bihar Excise Act for testing the samples and in the absence of any rules or protocol in that regard, the testing processes is prone to error and deficiencies.

There does not appear to be any intention on the part of the petitioner to breach the Excise Law.

There is no prohibition on the sale of non- alcoholic beverage.

The object and purpose of the prohibition law is to enforce, implement and promote complete prohibition of liquor and intoxicants in the State of Bihar and matters connected therewith and incidental thereto.

A minor infraction in the ethyl alcohol content of a non-alcoholic beverage like fruit beer does not at all Patna High Court CR. WJC No.144 of 2021 dt.09-02-2022 offend the object and purpose of the Prohibition Act. It is highly unreasonable to conclude that a minor infraction would lead to prosecution of the person compulsorily.

In State of Haryana & Others Vs. Bhajan Lal and Others reported in Supp(1) SCC 335, a two Judges Bench of the Supreme Court provided an illustrative set of situations, where the High Court could exercise its jurisdiction under Article 226 of the Constitution of India or Section 482 of the Code of Criminal Procedure for quashing the FIR.

One of the conditions provided is that if the allegations made in the FIR, if taken on its face value and accepted in its entirety does not prima facie constitute any offence or make out any case against the accused, such subject FIR can be quashed.

In a more recent decision of the Supreme Court in Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra and Others (2021) SCC OnLine SC 315, the Supreme Court has reiterated those principles but has Patna High Court CR. WJC No.144 of 2021 dt.09-02-2022 cautioned that the investigation ought not to be thwarted and the power of quashing the FIR should be exercised sparingly with circumspection.

The prosecution of the petitioner in the instant case is on a finding that some of the samples which were seized contained more ethyl alcohol than the tolerance limit. If the articles, so seized, were not sold as intoxicants or could be consumed as intoxicants, it would not fall under the category of liquor which is prohibited under the Act. A margin of error is inherent in such strict legislation.

The facts of this case thus does not warrant the prosecution of the petitioner.

It matters not, if after the investigation charge- sheet has been submitted.

If the court finds that the offence under FIR is not made out, submission of a report under Section 173 of the Code of Criminal Procedure would not come in the way of the exercise of jurisdiction of this Court (refer to Anand Patna High Court CR. WJC No.144 of 2021 dt.09-02-2022 Kumar Mohatta & Anr. Vs. State (Govt. of NCT of Delhi), Department of Home & Anr. [(2019) 11 SCC 706] ).

For the reasons aforesaid, the subject FIR viz. Guraru P.S. Case No. 100 of 2020 is, hereby, quashed.

All other prosecution emanating out of the subject FIR is also quashed.

The application stands allowed.

(Ashutosh Kumar, J) krishna/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	26.02.2022
Transmission Date	26.02.2022