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District- Banka(Bihar)
G.R. Case No.- 3386/17
State of Bihar Vs. Mayank Kumar Jha

FORM A

**IN THE COURT OF EXCLUSIVE SPECIAL EXCISE JUDGE, Court No.-1
-cum-
ADDITIONAL DISTRICT & SESSIONS JUDGE-II, BANKA**

Present:- Sri Abhishek Kumar Bhan,

Exclusive Spl. Excise judge, Court no.-1 -cum-

Addl. District & Sessions Judge-II, Banka

[Date of Judgment:- 17-02-2023]

[G.R. Case No. -3386/2017]

F.I.R. No.:- 215/17

Crime:- Under Section 30(a) of Bihar Prohibition & Excise Act
2016.

Police Station:- Dhoraiya, **Banka**

INFORMANT	Md. Shoem Alam (S.H.O Dhoraiya P.S.)
REPRESENTED BY	Mr. Awadhesh Kumar Singh, (Ld.Spl.P.P.) Mr. Om Prakash, (Ld. Adl. Spl. P.P.)
ACCUSED	1. Mayank Kumar Jha , S/o- Trilok Narayan Jha, village- Punsiya, P.S.- Rajoun, Dist- Banka, aged about 26 years
REPRESENTED BY	Mr. Shankar Thakur, (Ld. Adv.)

FORM B

Date of Offence	16.10.2017
Date of F.I.R.	16.10.2017
Date of Chargesheet	16.12.2017
Date of Framing of Charges	24.04.2019
Date of commencement of evidence	14.11.2017
Date on which judgment is reserved	07.02.2023
Date of the Judgment	17.02.2023
Date of the Sentencing Order, if any	N.A

Accused Details

Rank of the Accused	Name of Accused	Date of Arrest	Date of Release on Bail	Offences Charged with	Whether Acquitted or convicted	Sentence Imposed	Period of Detention Undergone during Trial for purpose of section 428 Cr.P.C.
1	Mayank Kumar Jha			30(a), of Bihar Prohibition & Excise Act 2016.	Acquitted	N.A	

FORM C

LIST OF PROSECUTION/DEFENCE/COURT WITNESS

A. Prosecution

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS
PW 1	Md. Soaib Alam	Informant

B. Defene Witness, if any:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS
NIL	Nil	

C. Court Witness, if any:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS
Nil	Nil	

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS

A. Prosecution

Sr. No.	Exhibit Number	Description
1	Ext.-1	Seizure list



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2	Ext.-2	Arrest memo
3	Ext.-3	written statement
4	Ext.-4	Formal FIR

B. Defence:

Sr. No.	Exhibit Number	Description
1	Nil	

C. Court Exhibits

Sr. No.	Exhibit Number	Description
1	Nil	

D. Material Objects

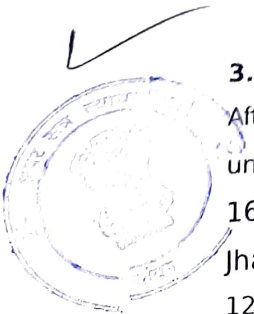
Sr. No.	Material Object Number	Description
1	Nil	

J U D G M E N T

1. The above named sole accused person stands charge under section 30(a) of Bihar Prohibition & Excise Act, 2016.

2. The FIR is based upon the fardbeyan of Dhoraiya S.H.O. Shoeb Alam in which he has stated that he received information regarding illegal transportation of the wine then after consituting police party, he proceeded for spot and he further received tip of that one Tempo and one Maruti van is coming which is loaded with illicit country made and foreign made liquor and one person riding on motorcycle is clearing their way. At 10:20 PM near Beldiha Mor one motorcycle rider was apprehended and then one maruti van and one tempo was seized out of that two accused persons were arrested. After following rules of search and seizure the seizure list was prepared in which 635 pouch of 200 ml each and 216 bottles of Royal Stag was seized and accordingly an FIR was registered.

3. On the basis of written report, Police investigated the case. After investigation Investigating Officer submitted the chargesheet under section 30(a) of Bihar Prohibition & Excise Act, 2016 on 16.12.2017 against accused person namely Mayank Kumar Jha and subsequently cognizance of the offence was taken on 12.03.2018 and the accused persons was summoned to face the trial.



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4. On 14.04.2019 Charge under section 30(a) of Bihar Prohibition & Excise Amendment Act, 2016, read over to the accused persons to which he pleaded not guilty and claimed to be tried.
5. On 13.01.2023 statement of accused persons has been recorded under section 313 of Cr.P.C in which he denied the case of the prosecution and claimed to be innocent.
6. Defence case in brief is denial of the entire occurrence and innocence of the accused persons.
7. Now, The point for determination arises as to whether prosecution has been able to bring home the guilt of the accused persons beyond the shadow of reasonable doubts?

FINDINGS

8. In order to prove its case, the prosecution has examined only one witness in this case namely:-

PW-1 is Shoeb Alam

9. The defence has not adduced any oral evidence nor any documentary evidence in this case.

10. Now, coming to the evidence of the prosecution witness:-

PW-1 is Md. Shoeb Alam, who is the informant of this case and in his chief has stated that on 16.10.2017 he was conducting raid then he received information that one tempo and one maruti van are coming with illicit wine. One person riding on the motorcycle is clearing their way. They first caught hold of the motorcycle driver and on Tempo and Van they arrested Mayank and Nikesh and 635 pouch of 200 ml each and 216 bottles of Royal Stag was seized. Accordingly, seizure list was prepared and marked as Ext.-1. The arrest memo as Ext.-2 and the self written statement as Ext.-3 and formal FIR as Ext.-4 stands exhibited.

During cross-examination he has stated that the timing of occurrence is in the night that's why he was not able to meet anyone. He brought all seized item to the P.S.



ARGUMENTS

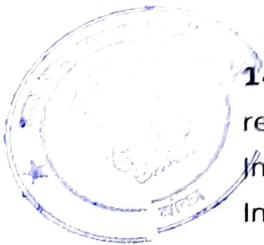
11. During the argument the Ld. Defence Counsel Sri. Shankar Thakur argued that this is a false and fabricated case and whole seizure has been made against the provision of Cr.P.C. The copy of seizure list has not been given to the accused person. There is no independent witnesses produced by the prosecution, which itself raises doubt about the veracity of prosecution case. So, it is clear that the prosecution has miserably failed to prove the case against the accused person.

12. Ld. Spl. P.P. Sri Awadhesh Kumar Singh, and Ld. Addl. Spl. P.P. Sri Om Prakash submitted that the prosecution by producing three chargesheeted witnesses the prosecution has been successful in proving the case beyond all shadow of reasonable doubts. The contradiction realised by Ld. Defence Counsel is not material enough to raises doubt about the case. The society has become such that no independent witness is coming to support the police at the time of the raid as this is a social legislation, the presumption is definitely against the accused person as per the section 32 of the Bihar Prohibition and Excise Act.

DISCUSSIONS

13. By virtue of Bihar Prohibition and Excise Act, 2016, there is total prohibition on manufacture, bottle, distribute, transport, collect, store, possess, purchase, sell or consume any intoxicant or liquor in entire State of Bihar.

14. From perusal record an the evidences available on the record it is clear that this is a case against recovery of illicit liquor. In such cases seizure becomes most important piece of evidence. In this case the prosecution neither produced the I.O. nor the seizure list witnesses. The irony is that all the chargesheeted witnesses are official witness and the reason best known to prosecution they did not produce the witnesses during the trial which lasted for more than four years. So, from the perusal of



evidences available on the record it is clear that the prosecution has not produced test report, destruction report, which may prove that the seized liquor was dangerous to human consumption. The non-production of I.O. and the seizure list witnesses eat up the very basis of prosecution case.

15. So from the above said discussion it is clear that prosecution by not producing seizure list witnesses, I.O and raiding party members as witnesses, the seizure list, liquor test report, destruction report and considering the contradiction amongst the witness regarding seized item read with FIR and seizure list, this court is of considered opinion that the prosecution has miserably failed to prove the charges leveled against the accused beyond all shadow of reasonable doubt. Hence the Order.

ORDER

In the light of above said discussions the accused namely Mayank Kumar Jha, is hereby acquitted from the charges under section 30(a) of Bihar Prohibition and Excise Act, 2016. Since he is already on bail, hence he is discharged from the liability of bail bond.

File to be consigned to record room.

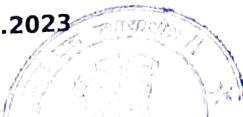
Dictated and corrected by me.

Let a copy of this judgement be sent to the District Magistrate under section 365 Cr.P.C.

(Dictated to the Stenographer, Transcript, computerized and print out taken by him and after correction signed and then pronounced by me in open court on this 17th February, 2023)



Abhishek Kumar Bhan
17.02.23
(Abhishek Kumar Bhan)
Spl. Excise Judge, court no.-1
-cum-
Addl. Dist. & Sess. Judge-II
Banka.
Dated 17.02.2023



Abhishek Kumar Bhan
17.02.23
(Abhishek Kumar Bhan)
Spl. Excise Judge, court no.-1
-cum-
Addl. Dist. & Sess. Judge-II
Banka.
Dated-17.02.2023

