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**COURT OF EXCLUSIVE SPECIAL JUDGE, EXCISE II,
NAWADA.**

Excise No. 2664/2022.

(Arising out of Excise P.S Case No. 521 of 2022)

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State of Bihar

Versus

Bikram Kumar, aged about 22 years,

S/o- Saryug Ravidas,

R/o: Vill.- Darshan, P.S. - Govindpur, Distt.- Nawada

.....Accused.

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Appearance:

For the Accused: Sri Sunil Kumar Sinha (Ld. Advocate)

For the State: Sri. Ishwari Prasad Sharma (Ld. Spl.P.P.)

PRESENT :- Shri Rajeev Ranjan Kumar

**Exl. Spl. Judge Excise II,
Nawada**

Dated :- 25.04.2023

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JUDGEMENT

1. The charge under Section 37 of Bihar Prohibition and Excise Act 2016 (hereinafter referred to as "Act 2016") against the accused Bikram Kumar was framed on dated 16th of February 2023.

After hearing the



pleaded not guilty and claimed to face trial before the Court.

2. The prosecution case is as follows –

Prosecution case is that on dated 23.11.22, there were a search going on at Govindpur Chowki under Govindpur Police Station of District Nawada. In the mean time, one person named as Bikram Kumar was found positive after being tested through breathe analyzer machine and presence of alcohol i.e 72mg/100ml was found in his body. It is further found that the said Bikram Kumar had earlier been made accused in Excise P.S case no. BAC-2675/2022 dated 09.11.22 on the allegation regarding consumption of liquor. The accused person was arrested and as per provision of the Act, 2016, he was sent to judicial custody on dated 25.11.2022. On basis of the aforesaid typed complaint, present Excise P.S Case no. 521/2022 is lodged on dated 24.11.2022 for an offence under section 37 of Bihar Prohibition and Excise Act, 2016. After investigation of the case, prosecution report was submitted on dated 09.12.22 vide charge sheet no. 344/2022. On the basis of the prosecution report, the court had taken cognizance under section 37 of Act, 2016 on dated 13.01.2023. Police papers were supplied to the accused on dated 07.02.23 and thereafter, charge was framed on dated 16.02.23 for an offence under section 37 of Act, 2016.

3. The charge under section 37 of Act, 2016 was framed against an accused Bikram Kumar on dated 16/02/2023 and the charge was read over and explained to the accused in Hindi to which he pleaded not



4. Now, the issues before the court are –

Whether the prosecution has proved/established its case against an accused person and thereafter, Whether the accused person has discharged its burden as shifted upon him, if the prosecution succeeded to prove its case against an accused.

5. In order to prove its case, the prosecution has examined three witnesses from its side and thereafter, the accused was examined under section 313 of Criminal Procedure Code, 1973 (hereinafter referred as Cr.P.C.) on dated 13/04/2023.

6. The prosecution witness (hereinafter referred as PW) no. 1 is Rahmat Jama who had deposed before the court on dated 28.02.23. P.W-1 has stated during examination in chief before the court that at the time of incident, he was posted at Govindpur, Check Post. Date of incident is on dated 23.11.22 at about 07:26 in the evening. There were search going on at the check post and during the said search, one Bikram Kumar was coming from Jharkhand, was intercepted and after being tested through breathe analyzer machine, presence of alcohol was found in his body and quantity of alcohol was 72 mg/100 ml. The said Bikram

Kumar had been made accused in the similar nature of offence. P.W-1 had identified his signature over the arrest memo which has been marked as Ext.1/1. Breathe analyzer report dated 23.11.22 was also identified by P.W-1 which was marked as Ext.1/2. During cross-examination, it was further stated by P.W-1 that at the time of search, he alongwith Ranjan



Breathe analyzer report is attached with the present record. It was further stated by P.W-1 that alcohol 72 mg/100ml was found in the body of the accused. P.W-1 had denied the suggestion that Breathe analyzer machine was not in proper condition and the accused was not found in alcoholic condition.

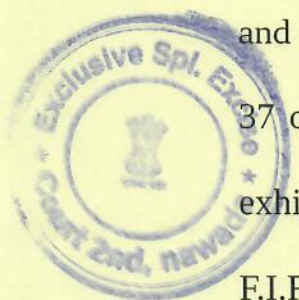
7. The prosecution witness (hereinafter referred as PW) no. 2 is Ranjan Kumar had deposed before the court on dated 28.02.23, who stated during examination in chief that at the time of incident, he was posted at Govindpur, Check Post. Date of incident is on dated 23.11.22 at about 07:26 in the evening. There were search going on and the said Bikram Kumar was coming from Jharkhand, was found in alcoholic condition and after being tested through breathe analyzer machine, presence of alcohol was found in his body and quantity of alcohol was 72 mg/100 ml. The said Bikram Kumar had earlier been made an accused in the similar nature of offence. P.W-2 had identified his signature over the breathe analyzer report dated 23.11.22 which was marked as P.W.2/3. P.W-2 has also identified his signature over arrest-memo which was exhibited as P.W 2/4. P.W-2 stated during his cross-examination that he alongwith Rajesh Kumar, Rahmat Jama and Home-guards were present at the place of spot. He was conducting the search through breathe analyzer machine. The arrest memo was prepared at the time of arrest. Report was taken from Breathe analyzer machine at the place of spot. He again reiterated to the court that he was present at the



analyzer machine was not in proper condition and the accused was not found in alcoholic condition.

8. The prosecution witness (hereinafter referred as P.W.) no. 3 is Rajesh Kumar Singh who was examined before the court on dated 28.02.23 and stated before the court that he was posted at Govindpur, Check Post, on the date of incident. He is investigating Officer of the case. Date of incident is on dated 23.11.22 at about 07:26 in the evening. During course of investigation, he had recorded the statement of informant. Informant had stated before him that there were search going on at Govindpur and during search one person named as Bikram Kumar was found in alcoholic condition and after being tested through breathe analyzer machine quantity of alcohol 72 mg/100 ml was found in his body. The said Bikram Kumar had further confessed that he had earlier been arrested on allegation of consumption of liquor on dated 02.11.22 and after payment of fine as imposed by the court, he had been released by the court. Record relating to the accused Bikram Kumar was searched and the statement of accused Bikram Kumar was found to be true.

✓ During investigation, the allegation against the petitioner was found true and charge sheet has been submitted against the accused under section 37 of Act 2016. Charge sheet is in his writing and signature which is exhibited as P.W 3/5. Typed complaint report attached with the formal F.I.R appears to be signed by Ranjan Kumar which was identified by this witness and has been exhibited as Ext. P.W 3/6. Previous case which



bearing signature of P.W 2 who identified his signature over it and breathe analyzer machine report dated 09.11.22 has been exhibited as P.W 3/7. Formal F.I.R and the signature of Aditya Kumar, Inspector Cum Officer In-charge of Excise Police Station, Nawada was identified and his signature was exhibited as an Ext. P.W 3/8. During course of cross-examination, he further stated that he was present alongwith Rahmat Jama, Ranjan Kumar and Home guards at the place of spot. Breathe analyzer machine was in working condition. 72 mg/100 ml alcohol was found in his body. He further denied the suggestion that the accused was not found in alcoholic condition and the machine was not in proper condition.

9. After examination of prosecution witnesses, the accused person was examined under section 313 of Cr.P.C. on dated 13.04.2023 and during his examination, the court had specifically made aware to the accused Bikram Kumar regarding the evidence which had come after examination of prosecution witnesses. The court has asked to the accused that on dated 23.11.22, he was searched at Govindpur Check post through breathe analyzer machine and 72 mg/100 ml alcohol was found in his body and it is further alleged that he had earlier been made accused in similar nature of offence under Excise Act. Thereafter, accused person stated before the court that evidence is false and he had falsely been sent to judicial custody in a false case and further claimed to be an innocent.



Sachin Kumar who was examined before the court on dated 18.04.23. He stated before the court that he knows the accused Bikram Kumar. He is a labourer. He had not seen consumption of liquor by Bikram Kumar at any time. There is no criminal case against the accused Bikram Kumar. During cross examination, he further stated that there is D.W 1 and accused Bikram Kumar. He further stated that he does not live with the accused Bikram Kumar at twenty four hours and meet him some times. After examination of D.W 1 defence had not produced any more witnesses from its side.

11. Thereafter, the case is fixed for argument. The learned Spl. P.P has advanced argument from his side and argued that there are three witnesses produced from its side and all witnesses have supported the prosecution case. P.W 1 who had identified his signature as well as Breathe analyzer report. P.W 2 who had also identified his signature over the breathe analyzer report, P.W 3 who is the I.O of the case, has submitted charge sheet against the accused and identified his signature over the breathe analyzer report. All prosecution witnesses as well as records available before the court supports the prosecution case and hence, the accused person is guilty of offence committed under section 37 of Act,2016 and he is liable to be get convicted by the court.

12. On the other hand, the learned defence counsel appearing on behalf of the accused Bikram Kumar submits before the court that there is no independent witness examined before the court, hence it can not be



Hence, accused person deserves acquittal in this case.

13. The court has gone through the records as well as documents produced and the evidence by prosecution witnesses as well as the evidence given by the accused who was examined under section 313 of Cr.P.C and deposition made by the defence witnesses. The typed complaint report was given by Ranjan Kumar, A.S.I., Bihar Excise Department and it was exhibited as Ext. P.W 3/6. Breathe analyzer report dated 09.11.22 is also produced before the court and exhibited as Ext P.W 3/7. Formal F.I.R alongwith signature of Aditya Kumar has also been marked as Ext. P.W 3/8 as P.W 3 had identified the signature of Aditya Kumar Inspector Bihar Excise Department. Breathe analyzer report dated 23.11.22 is the most vital document and it has already been exhibited as Ext. P.W 1/2 Signature of Ranjan Kumar, A.S.I has already been exhibited as Ext. P.W 2/3. Accused had earlier been taken into police custody and got released after payment of fine in a previous case. Copy of breathe analyzer report dated 09.11.22 has been produced before the court and exhibited as Ext. P.W 3/7. Signature of the accused Bikram Kumar over the breathe analyzer report dated 09.11.22 and breathe analyzer report dated 23.11.22 appears to be the same and there is no ambiguity in the signatures of accused Bikram Kumar. Accused person was examined under section 313 Cr.P.C and he has not shown any reasonable explanation as to how he has been implicated in the present case nor did defence witness in his chief-examination before the



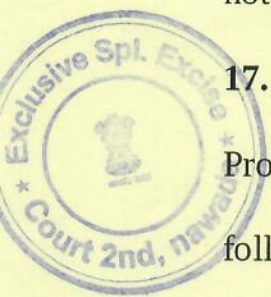
14. Hence, considering all facts and circumstances, the court is of opinion that charge framed under section 37 of Bihar Prohibition and Excise Act is hereby established by the prosecution and accused is found guilty under section 37 of Bihar Prohibition and Excise Act, 2016. Accused is taken into judicial custody. Bail bond furnished on behalf of accused Bikram Kumar is hereby cancelled. It is directed that accused shall be sent to judicial custody.

15. On the point of sentence, the court has heard arguments on behalf of both sides. It is argued on behalf of defence that the court may kindly take lenient view as the accused is guilty of consumption of liquor only. On the other hand, the learned Spl P P has argued that there is specific provision regarding punishment of repeat offenders and the accused must be awarded the same punishment.

16. The court has gone through the proviso of section 37 of Act 2016 which has been added by making rules in the year 2022 and it clearly provides that in case of repeat offenders, the State Government may, by notification, prescribe additional penalty or imprisonment or both.

17. Now, the court has gone through sub rule (4) of Rule 9 of Bihar Prohibition & Excise (Amendment) Rules, 2022 which provides as follows -

(4) If a person is arrested under section 37 of the Act and where it comes to the notice of the Executive Magistrate that the said person has been previously convicted under section 37, then the Executive Magistrate



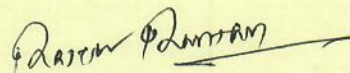
accused to undergo simple imprisonment for a period of one year. When the accused was arrested for similar nature of offence on earlier occasion, he got punishment of fine which provides for offenders who have committed an offence under section 37 of Act, 2016. The accused Bikram Kumar has again been arrested under section 37 of Act, 2016. Hence, he now appears repeat offenders and as per provision made in the rule by amendment in the year 2022, the court hereby imposes sentence for one year of imprisonment to the accused Bikram Kumar. Hence, the accused Bikram Kumar is hereby sentenced for a period of one year. Order of sentence is pronounced accordingly.

(Written and corrected by me)



Rajeev Ranjan Kumar

Exl. Spl. Judge Excise II, Nawada



Rajeev Ranjan Kumar

Exl. Spl. Judge Excise II, Nawada

Dated :- 25.04.2022

