

ITEM NO.4

COURT NO.4

SECTION II-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Cr1.) No(s). 1821/2022

(Arising out of impugned final judgment and order dated 23-10-2019 in CRLM No. 66802/2019 passed by the High Court Of Judicature At Patna)

SUDHIR KUMAR YADAV

@ SUDHIR SINGH @ SUDHIR KUMAR

Petitioner(s)

VERSUS

THE STATE OF BIHAR

Respondent(s)

([THE INSTANT MATTER WAS DISMISSED BY THIS HON'BLE COURT VIDE ORDER DATED 21.3.2022. HOWEVER, ON THE LARGER ISSUE POSED BY THE HON'BLE COURT, THE MATTER IS BEING LISTED BEFORE THE HON'BLE COURT])

Date : 24-08-2022 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
 HON'BLE MR. JUSTICE M.M. SUNDRESH

For Petitioner(s) Mr. Krishan Pal Mavi, AOR

For Respondent(s) Mr. S.B. Upadhyay, Sr. Adv.
 Mr. Rishi K. Awasthi, Adv.
 Mr. Prashant Kumar, Adv.
 Mr. Piyush Vatsa, Adv.
 Mr. Santosh Kumar - I, AOR

UPON hearing the counsel the Court made the following
 O R D E R

It took persistent questioning for almost 10 minutes to elicit an answer from the counsel for the State that no legislative impact study was ever carried out prior to the introduction of the Legislation! We clearly put to him that we are not concerned with the desirability or requirement of the Legislation as that is within Legislative domain and would be tested on the judicial aspect as far as the Constitutionality of the same is

assailed.

The affidavit filed seeks to state in para 17 that since the coming into force of the Excise Act, a total of 3,78,186 cases have been registered as on 11.05.2022 and trial has commenced in 1,16,103 cases. Trial is concluded in only 2473 cases leading to acquittal of 830 accused and conviction of 1643 accused persons. Thus, there is an acquittal rate of almost 1/3rd of the cases. The trial concluded is a small fraction of the total number of cases and at same pace, when the cases are filed, there will be, in our view, a burgeoning of cases to the extent making it unmanageable.

It is the say of the learned counsel for the State that the State had sent a proposal sanctioning 74 posts of Special Judges to be recruited to deal with the cases arising out of this Legislation and infrastructure has been constructed or is being constructed. It is also their say that the manpower sanction has also been granted. The budget provision is stated to have been made for the said purpose.

In view of the aforesaid, in order to appreciate the controversy, it is necessary that the view of the Patna High Court be heard in that behalf.

Learned counsel for the State submits that there is another petition bearing Writ Petition [Cr1.] No.420/2021 wherein the similar aspect was stated to have been examined by a coordinate Bench of this Court.

We have perused the order dated 18.05.2022 (Annexure CA/11 at page 116). A reading of the said order shows that some practices followed needed to be re-visited by the High Court particularly, if more than one bail applications are filed by co-accused persons arising from the self same FIR so that it is listed ordinarily before the same Court to avoid any disparity in passing orders in the bail applications. The Court deemed it proper to call upon Mr. Gaurav Agrawal, Mr. Santosh Kumar and Mr. Shoeb Alam to give suggestions which may be inputs for the High Court to take steps in making changes for giving effect to the suggestions to make the system more workable. However, on an analysis of the whole aspect, the Court felt that it would not like to delve more into the issue and it observed that the suggestions made by Mr. Gaurav Agrawal, learned counsel can be looked into by the High Court and possible steps to implement the same be taken for better administration of justice.

We, however, feel that what we are seeking to analyze is slightly different and a much larger canvass.

The aspect which we are examining is whether the recruitment should take place of the judicial officers sanctioned by the State Government and the hesitancy, if any, of the High Court in implementing the same.

In view thereof, we consider appropriate to issue notice to the Patna High Court through the Registrar returnable on 27.09.2022.

A copy of the order to accompany the notice.

We also call upon Mr. Gaurav Agrawal, learned counsel to assist the Court as an Amicus Curiae.

At this stage, learned counsel for the State submits that in view of the amendment of the Act, a proposal was made to the High Court to confer power on the duty Magistrate to deal with the first offence cases for consumers of alcohol so that a penalty can be imposed and the case closed. This aspect also we will consider after obtaining the inputs from the High Court.

It is now again stated that there is one Transfer Petition being Transfer Petition [Civil] No.1816/2022 listed for transfer of certain High Court matters dealing with the similar subject matter to this Court and it is requested that the said matter be also listed with the present proceedings.

The needful may be done after obtaining orders of Hon'ble the Chief Justice of India.

(ASHA SUNDRIYAL)
ASTT. REGISTRAR-cum-PS

(POONAM VAID)
COURT MASTER (NSH)