

ITEM NO.13

COURT NO.2

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 (Crl.) 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 : 09-12-2022 This petition was called on for hearing today.

**CORAM :**

**HON'BLE MR. JUSTICE SANJAY KISHAN KAUL**  
**HON'BLE MR. JUSTICE ABHAY S. OKA**

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

**For Respondent(s)** Mr. Gaurav Agrawal, AOR (AC)

Mr. Atmaram N.S. Nadkarni, Sr. Adv.  
Mr. Rishi K Awasthi, Adv.  
Mr. Prashant Kumar, Adv.  
Mr. Piyush Vatsa, Adv.  
Ms. Ritu Arora, Adv.  
Mr. Usman G Khan, Adv.  
Mr. Santosh Kumar - I, AOR

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

**RE : LARGER ISSUE POSED BY THE HON'BLE COURT**

The learned Amicus Curiae has filed a note for hearing for today pointing out that the Bihar Prohibition and Excise Act, 2016 (for short, "the Act") has been enforced for about six years and about

3,78,186 criminal cases have been registered under the Act, but only 4,116 cases have been disposed of. Thus the concern is creation of judicial infrastructure, recruitment of Judicial Officers and staff for trying cases under the said Act.

In the aforesaid context, in view of observations made on 01.04.2022, the State of Bihar has amended Section 37 of the said Act which provides for penalty for consumption of liquor. In case of a person only consuming the liquor he/she is liable to be arrested immediately and produced before the nearest Executive Magistrate and can be released on payment of penalty. Failure to pay the penalty would invite a simple imprisonment for one month and the product and the liquor destroyed. This is the position so far as the first offence is concerned. However, as per Explanation-1, there shall be no right of the accused to be released upon payment of the required penalty and the Executive Magistrate based upon the report by the Police Officer or an Excise officer, may, for the reasons to be recorded in writing refuse to release the accused on payment of penalty and commit him to such custody as he deems fit.

The issue flagged in the previous order has been that while the aforesaid provision was introduced by amendment, the Patna High Court had

reservations on conferring the powers of a Judicial Magistrate to an Executive Magistrate under Section 37(2) of the Act.

The learned Amicus obtained the response from the Patna High Court and has flagged the issues. The first issue is creation of judicial infrastructure and appointment of judicial officers. 74 Special Courts have been set up in the State of Bihar in 2019, 140 vacancies, including 74 for special courts, were advertised, out of which 106 posts were filled vide Notification dated 01.10.2021. The fresh vacancies have been advertised and the recruitment process is on. The State of Bihar is also stated to have appointed the sanctioned 666 posts for support staff which have also since been advertised. The recruitment process is, however, accepted to be completed only in August, 2023 and three lakhs applications have been received. The Patna High Court has also approved the map of construction of buildings for special Courts.

Learned senior counsel for the State will obtain instructions to specify the schedule for construction of the Special Courts.

Now turning to the second issue, it is stated that the Government of Bihar requested the High Court vide letter dated 02.04.2022 for conferring the powers of Judicial Magistrate 2<sup>nd</sup> Class

on the District Collectors of 38 Districts but this proposal was not accepted. There were some communications thereafter also seeking reconsideration and the High Court has taken a view that the proposal of the Government to designate the learned Judicial Magistrate to try the offences is in conflict with Section 37 of the Act which empowers the Executive Magistrates to try the cases.

Learned senior counsel for the State seeks time to respond to this issue as this is creating a deadlock.

Out of the directions sought, one has already been dealt with above and the second will depend upon the response of the State Government to the aforesaid.

There are two suggestions made by the learned Amicus Curiae. They are as under:

"A. It is the humble suggestion of the undersigned that if a person, especially a young individual, is apprehended of an alleged offence under Section 37 of the Act i.e, only for consumption, and he is also lodged in a jail alongwith other accused [who are accused of far serious offences], it would have adverse effect on such individuals.

B. The State Government may consider whether there is a need for a separate incarceration facility for individuals who are accused under Section 37 of the Act so that they do not end up graduating to more serious crimes."

We do believe that the aforesaid are

important and workable suggestions, more so, on account of the experience of the learned Amicus Curiae in the field in question.

Learned senior counsel seeks some time to obtain instructions even in this behalf.

List on 23.01.2023.

[CHARANJEET KAUR]  
ASTT. REGISTRAR-cum-PS

[POONAM VAID]  
COURT MASTER (NSH)