

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.14553 of 2021

Arising Out of PS. Case No.-488 Year-2020 Thana- SAKRA District- Muzaffarpur

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Ranjeet Kumar @ Ranjeet Rai, aged about 30 years, Male, Son of Jagdish Rai
Resident of Village - Sabha, P.S. Sakra, District - Muzaffarpur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Anshu Dhar Sharma, Advocate
For the State : Mr. Brajendra Nath Pandey, APP

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 05-08-2021

The matter has been heard *via* video conferencing.

2. The case has been taken up out of turn on the basis of motion slip filed by learned counsel for the petitioner on 29.07.2021, which was allowed.

3. Heard Mr. Anshu Dhar Sharma, learned counsel for the petitioner and Mr. Brajendra Nath Pandey, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State.

4. The petitioner apprehends arrest in connection with Sakra PS Case No. 488 of 2020 dated 26.09.2020, instituted under Sections 30(a)/38 of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as the 'Act').



5. The allegation against the petitioner is that when the police, on prior information that he had stored liquor at his house, went there, on seeing the raiding party, one person fled away, who was identified by the locals to be the petitioner and near the door of his house of brick and asbestos, 45 litres of branded whisky was recovered.

6. Learned counsel for the petitioner submitted that from the FIR itself it is clear that the recovery is from outside the house of the petitioner and that he has no connection with such recovery. It was further submitted that the petitioner has no criminal antecedent.

7. Learned APP submitted that from the FIR as well as the seizure list it is clear that the recovery is from the premises of the petitioner, inasmuch as, it is near the entrance and not outside the premises of the petitioner. It was submitted that it is very obvious that the door of the house would not open on the road or the field as there is some distance between the same and specifically it has been stated that when the police went to the house to conduct raid, the recovery was made and the same may not have been from inside the house, but definitely in the premises owned by the petitioner as is obvious, both from the FIR as well as the seizure list. Thus, learned APP contended that in such view of



the matter, *prima facie* an offence is made out under the Act and the present application under Section 438 of the Code of Criminal Procedure, 1973 would not be maintainable due to bar of Section 76(2) of the Act.

8. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds substance in the contention of learned APP. Once the recovery is said to be from near the door of the house of the petitioner and the narration in the FIR being that the police had conducted the raid in the house of the petitioner, it appears that the same is from the premises which was part of the household of the petitioner and not outside the same. Thus, as has been rightly submitted by learned APP, the present petition would not be maintainable due to bar of Section 76(2) of the Act.

9. In the aforesaid background, the petition stands dismissed as not maintainable.

(Ahsanuddin Amanullah, J)

Anjani/-

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