

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 24792 of 2021

Arising Out of PS Case No.-9 Year-2021 Thana- MAGADH MEDICAL COLLEGE District-
Gaya

=====

Suman Devi @ Suvan Devi, (Female), aged about 54 years, Wife of Late Chinta Manjhi, Resident of Village- Khiriyawan Bhuitoli, PS- Magadh Medical, District- Gaya.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s	:	Mr. Ravindra Kumar Sinha, Advocate
For the State	:	Mr. Amitesh Kumar, APP

=====

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 05-07-2021

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 28.06.2021, which was allowed.

3. Heard Mr. Ravindra Kumar Sinha, learned counsel for the petitioner and Mr. Amitesh Kumar, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State.

4. The petitioner apprehends arrest in connection with Magadh Medical PS Case No. 09 of 2021 dated 07.01.2021, instituted under Sections 30(a) of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as the 'Act').



5. The allegation against the petitioner is that, when police went for a raid, she was seen running out from her house and from her house, in 7 plastic bottles, 12 litres of countrymade mahua wine was recovered.

6. Learned counsel for the petitioner submitted that she is a lady and was not caught in the house. It was submitted that in the house nobody was found and there is no independent seizure list witness as the witnesses are two police personnel. Learned counsel submitted that the petitioner also does not have any other criminal antecedent. It was submitted that there has been non-compliance of Section 100 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code').

7. Learned APP submitted that a lady was seen running out from the house of the petitioner and, thus, the presumption is that she was the person and once she ran away, obviously there would be nobody present inside the house. Further, it was submitted that as per the allegation, 12 litres of countrymade liquor has been recovered and that being the position, the present application itself would not be maintainable in view of bar of Section 76(2) of the Act which prohibits an application under Section 438 of the Code. It was further submitted that once there is no independent witness around, obviously there has to be some



witness and the law permits that even personnel of the raiding party can act as seizure list witnesses, which has been done in the present case. It was submitted that it has been clearly stated in the FIR itself that though the public had reached there but nobody was ready to become witness and that is why the two personnel of the raiding party had to be made witnesses to the seizure.

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, from the house of the petitioner it is alleged that liquor has been recovered, *prima facie*, an offence is made out under the Act and, thus, 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.)

P. Kumar

AFR/NAFR	
U	
T	

