

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 31684 of 2020

Arising Out of PS Case No.-170 Year-2019 Thana- BACHHWARA District- Begusarai

1. Baidyanath Rai @ Baidyanath Kumar Rai Male, aged about 31 years, Son of Indareshwar Rai.
2. Shrawan Kumar, Male, aged about 25 years, Son of Surendra Rai.
Both residents of Village - Mohanpur, PS- Patori, District - Samastipur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ashok Kumar, Advocate
For the State	:	Mr. Sunil Kumar Pandey, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL JUDGMENT

Date : 09-03-2021

Heard Mr. Ashok Kumar, learned counsel for the petitioners and Mr. Sunil Kumar Pandey, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State.

2. The petitioners apprehend arrest in connection with Bachhwara PS Case No. 170 of 2019 dated 29.08.2019, instituted under Section 30(a) of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as the 'Act').

3. The allegation against the petitioners is that when the police, on information that on the Bank river at Suroghat some persons were indulging in smuggling of illegal wine, reached the



spot, they saw persons standing along with four motorcycles and upon seeing the police, they ran away and on search liquor was recovered.

4. Learned counsel for the petitioners submitted that though out of four motorcycles, two of them belonged to the petitioners, but they were used by their relatives and upon seeing police, they had fled away out of fear and the recovery has been planted. It was submitted that though it is alleged that there is some recovery from the *dicky* of the motorcycle of petitioner no. 1, but from the motorcycle of petitioner no. 2, nothing has been recovered. It was further submitted that the petitioners have clean antecedent.

5. Learned APP submitted that when the motorcycle belonged to the petitioners, there was no occasion for them to flee away on seeing the police and further that from the motorcycle of petitioner no. 1, there is recovery and even the petitioner no. 2 leaving the motorcycle and fleeing away and all the four motorcycles found together clearly indicates that all the accused were very much part of the illegal trade in liquor. Thus, it was submitted that the present application is not maintainable in view of bar of Section 76(2) of the Act as *prima facie*, a case is made out against the petitioners.



6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds substance in the objection of learned APP. Once all the four motorcycles including those of the petitioners, were recovered after the persons riding them had fled away on seeing the police and there being recovery from some of the motorcycles, at least, as per the allegation, offence under the Act is made out.

7. For reasons aforesaid, the application stands disposed off as not maintainable.

(Ahsanuddin Amanullah, J.)

P. Kumar

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