

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 31757 of 2020

Arising Out of PS Case No.-368 Year-2020 Thana- TURKAULIYA District- East Champaran

Mukesh Paswan, aged about 30 years (Male), Son of Jit Lal Paswan, Resident of Village - Raghunathpur, PS- Raghunathpur OP (Turkauliya), District - East Champaran.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Anil Kumar, Advocate
For the State : Mr. Md. Arif, APP

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH**

ORAL JUDGMENT

Date : 20-02-2021

Heard Anil Kumar, learned counsel for the petitioner and Mr. Md. Arif, learned In-charge Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State.

2. The petitioner apprehends arrest in connection with Turkauliya (Raghunathpur) PS Case No. 368 of 2020 dated 17.06.2020 instituted under Sections 272 and 273 of the Indian Penal Code and Section 30 (a) of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as the 'Act').

3. The allegation against the petitioner is that from his house, upon search, 30 litres of countrymade liquor was recovered.



4. Learned counsel for the petitioner submitted that the recovery is from the joint house of the petitioner and not from his exclusive and conscious possession.

5. Learned APP raised a preliminary objection and submitted that the present application is not maintainable, in view of the bar under Section 76 (2) of the Act, as the offence is made out under the Act.

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.

7. Since, as per the allegation, recovery has been made from the house of the petitioner, an offence is made out under the Act and, thus, the present application under Section 438 of the Code of Criminal Procedure, 1973 is not maintainable.

8. In view thereof, the application stands disposed off as not maintainable.

(Ahsanuddin Amanullah, J.)

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