

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.32840 of 2020

Arising Out of PS. Case No.-434 Year-2020 Thana- ISLAMPUR District- Nalanda

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1. Ajay Jamadar, aged about 30 years, Male, Son of Soren Jamadar
 2. Jitendra Jamadar, aged about 32 years, Male, son of Late Kameshwar Jamadar

Both resident of village - Kailashpuri, P.S. - Islampur, District - Nalanda.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Pankaj Kumar, Advocate
For the State	:	Mr. Md. Mushtaque Alam, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 26-03-2021

Heard Mr. Pankaj Kumar, learned counsel for the petitioners and Mr. Md. Mushtaque Alam, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State.

2. The petitioners apprehend arrest in connection with Islampur PS Case No. 434 of 2020 dated 28.07.2020, instituted under Section 30(a) of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as the 'Act').

3. As per the FIR, the police, upon secret information, raided the house of the petitioners and from the house of petitioner no. 1, five litres of country-made wine was recovered as



also five litres illegal liquor was recovered from the house of petitioner no. 2.

4. Learned counsel for the petitioners submitted that the house is abandoned and they do not live there. It was submitted that the petitioners do not have any criminal antecedent.

5. Learned APP raised a preliminary objection and submitted that once liquor is recovered from the house of the petitioners, the present application under Section 438 of the Code of Criminal Procedure, 1973 is not maintainable in view of bar of Section 76(2) of 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 contention of learned APP. As recovery admittedly is from the house of the petitioners, the present application would not be maintainable.

7. Accordingly, the application stands disposed off as not maintainable.

(Ahsanuddin Amanullah, J)

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