

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.34644 of 2020

Arising Out of PS. Case No.-124 Year-2020 Thana- DAGARUA District- Purnia

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1. Pradhan Hembram (Male), aged about 24 years, S/o Late Sanjhala Hembram
 2. Tallu Hembram @ Tallu Mukhiya, (Male), aged about 37 years, S/o Laxmi Hembram
 3. Manju Hembram, (Male), aged about 40 years, S/o Manjeel Hembram

All are resident of Village-Malo Bota Satari Tola, Police Station-Dagarua, District-Purnea.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Md. Helal Ahmad, Advocate
For the State : Mr. Amitesh Kumar, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 17-04-2021

The matter has been heard *via* video conferencing.

2. Heard Mr. Md. Helal Ahmad, learned counsel for the petitioners and Mr. Amitesh Kumar, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State.

3. The petitioners apprehend arrest in connection with Dagarua PS Case No. 124 of 2020 dated 19.08.2020, instituted under Sections 272/273 of the Indian Penal Code and 30(a) of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as the 'Act').



4. The allegation against the petitioners is that from their house, various quantities of country-made liquor were recovered.

5. Learned counsel for the petitioners submitted that though in the FIR recovery has been shown from the house of the petitioners, but on the seizure list, there is no signature of any family member of the petitioners who were present in the house, which gives rise to doubt as to whether there was actual seizure from the house of the petitioners. Learned counsel submitted that there being basic irregularity in the case, the petitioners be granted indulgence. It was further submitted that the petitioners have no criminal antecedent.

6. Learned APP submitted that as per the FIR, two independent witnesses of the locality have signed and further that one person who was caught from whom also seizure was made has also signed on the seizure list. It was submitted that the law requires only a witness and it is not that a family member of the accused, who may or may not be present, has to sign as any two persons are competent to be witnesses and when two persons in the present case are independent witness, the requirement of law stands fulfilled. Learned counsel submitted that once, as per the FIR, recovery is shown from the house of the petitioners, the present application under Section 438 of the Code of Criminal



Procedure, 1973 would not maintainable in view of bar of Section 76(2) of the Act.

7. 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 is said to be from the house of the petitioners, *prima facie*, offence is made out and, thus, the bar of Section 76(2) of the Act would come into play.

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

(Ahsanuddin Amanullah, J)

Anjani/-

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