

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.33989 of 2020

Arising Out of PS. Case No.-133 Year-2020 Thana- ARWAL District- Jehanabad

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1. Nilam Devi, aged about 30 years (F), wife of Appu Khalifa
 2. Vijanti Devi, aged about 32 years (F), wife of Pappu Khalifa
 3. Mina Devi, aged about 38 years (F), wife of Suresh Khalifa
 4. Suresh Khalifa, aged about 35 years (M), son of late Ramsundar Khalifa
 5. Appu Khalifa, aged about 33 (M), son of Jaj Khalifa

All are resident of village Fakharpur Nat Toli, P.S. and District- Arwal

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Paras Nath, Advocate
For the State	:	Mr. Raj Kishore Singh, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 12-04-2021

The matter has been heard *via* video conferencing.

2. Heard Mr. Paras Nath, learned counsel for the petitioners and Mr. Raj Kishore Singh, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State.

3. Learned counsel for the petitioners submitted that the application on behalf of petitioners no. 2 to 5 namely, Vijanti Devi, Mina Devi, Suresh Khalif and Appu Khalifa may be permitted to be withdrawn, as they have been arrested.

4. In view thereof, the application on behalf of petitioners no. 2 to 5 namely, Vijanti Devi, Mina Devi, Suresh



Khalif and Appu Khalifa stands disposed off as withdrawn and is limited to petitioner no. 1 namely, Nilam Devi.

5. The petitioner no. 1 namely, Nilam Devi apprehends arrest in connection with Excise Case No. 392 of 2020 arising out of Arwal PS Case No. 133 of 2020 dated 12.04.2020, instituted under Section 30(a) of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as the 'Act').

6. The allegation against the petitioner no. 1 namely, Nilam Devi is that from her house 45 litres, in three jerry cans of 15 litres each, fermented *mahua* was recovered.

7. Learned counsel for the petitioner no. 1 submitted that as per the FIR itself the whole village is said to have been raided by the police and from every house there has been some recovery, which is not practically possible and recovery has been made only from a few houses and the entire village has been made accused. Moreover, it was submitted that it is the husband who can be responsible for such activity and petitioner no. 1 is only a housewife and not knowing anything and has no criminal antecedent.

8. Learned APP submitted that the law does not contemplate any distinction between the husband and the wife and because the recovery, as per the FIR, is from the house of the



petitioner no. 1 namely, Nilam Devi, the present application under Section 438 of the Code of Criminal Procedure, 1973 shall not be maintainable due to bar of Section 76(2) of the Act.

9. 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 the FIR alleges recovery of 45 litres of fermented *mahua* from the house of the petitioner no. 1, *prima facie*, offence is made out under the Act and thus, the bar of Section 76(2) of the Act shall come into play.

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

(Ahsanuddin Amanullah, J)

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