

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 35551 of 2020

Arising Out of PS Case No.-306 Year-2019 Thana- SUGAULI District- East Champaran

Bhikhari Sahani, aged about 55 years, Male, Son of Late Khedu Sahani
Resident of Bheriyari Konwa Tola, PS- Sugauli, District- East Champaran.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Dhannjay Kumar No 2, Advocate
For the State : Mr. Sanjay Kumar, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 22-06-2021

The matter has been heard *via* video conferencing.

2. Heard Mr. Dhannjay Kumar No. 2, learned counsel for the petitioner and Mr. Sanjay Kumar, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State.

3. The petitioner apprehends arrest in connection with Sugauli PS Case No. 306 of 2019 dated 20.07.2019, instituted under Sections 272, 273/34 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 petitioner is that when police on informantion that one person was selling liquor on a motorcycle went to the spot, a person left the motorcycle and ran



away and on search, about 30 litres of countrymade liquor was recovered and the villagers who had gathered informed that the petitioner used to sell liquor in the village on the motorcycle.

5. Learned counsel for the petitioner submitted that the motorcycle does not belong to him and that there is no disclosure as to who identified the petitioner as the person who was ridding the motorcycle or used to sell the liquor on the same. It was submitted that neither the motorcycle nor the liquor belonged to him. It was further submitted that the petitioner has no criminal antecedent.

6. Learned APP submitted that as per the allegation, the villagers, who had gathered at the spot, had identified the petitioner and there is no reason for the villagers to falsely take the name of the petitioner. It was further submitted that only one person ran away and the villagers have unanimously taken the name of the petitioner and, thus, there is no confusion or ambiguity with regard to identify of the person who ran away leaving the motorcycle and the liquor behind on seeing the police. Thus, it was submitted that as there is direct and specific identification with regard to the petitioner that he was the person who was driving the motorcycle and used to sell liquor on the



same, the present application would not be maintainable due to 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.

8. Accordingly, both on merits as well as on the ground of non-maintainability, the application stands dismissed.

(Ahsanuddin Amanullah, J.)

P. Kumar

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