

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 37209 of 2020

Arising Out of PS. Case No.-224 Year-2020 Thana- KALYANPUR District- East Champaran

Rampukar Kumar @ Rampukar Yadav, aged 45 years, Male, Son of Late Rup Narayan Rai, Resident of Village - Yamunapur, PS - Kalyanpur, District - East Champaran.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Umesh Chandra Verma, Advocate
For the State	:	Mr. Brajendra Nath Pandey, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 03-09-2021

The matter has been heard *via* video conferencing.

2. Heard Mr. Umesh Chandra Verma, learned counsel for the petitioner and Mr. Brajendra Nath Pandey, learned Additional Public Prosecutor (hereinafter referred to as the ‘APP’) for the State.

3. The petitioner apprehends arrest in connection with Kalyanpur PS Case No. 224 of 2020 dated 02.09.2020, instituted under Sections 272/273 of the Indian Penal Code and 30(a)/41(1) of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as the ‘Act’).

4. The allegation against the petitioner is that on secret information that the petitioner was selling foreign liquor



from his paddy field, when the police went there, 154.650 litres of foreign liquor was recovered from a paddy field, which is said to belong to the petitioner, as was disclosed by the villagers.

5. On 13.07.2021, learned counsel for the petitioner had submitted that he has been falsely implicated as the field from which recovery is shown does not belong to him and only because it is stated that the villagers had informed that the field belongs to the petitioner, he has been made accused. Learned counsel drew the attention of the Court to the categorical statement made in paragraph no. 9 of the petition to this effect. Learned counsel submitted that he has been made accused under the same police station in another case i.e., Kalyanpur PS Case No. 218 of 2020 in similar circumstances only at the instance of his enemies.

6. On such stand, the Court had asked learned APP to obtain the up-to-date legible photocopy of the entire case diary as also a detailed report after due enquiry with regard to whether the field from which recovery is shown in the present case belongs to the petitioner/his family, from the Superintendent of Police, East Champaran.

7. In terms thereof, a report has been submitted by the Superintendent of Police, East Champaran dated 05.08.2021, in



which it has been stated that the Circle Officer, Kalyanpur, East Champaran, Motihari has reported that the field from which recovery of liquor has been effected is under the possession and cultivation of the petitioner.

8. Having regard to the aforesaid, the Court finds that once recovery is from the place which is under possession and cultivation of the petitioner, *prima facie*, an offence is made out under the Act and, thus, the present petition under Section 438 of the Code of Criminal Procedure, 1973 would not be maintainable due to bar of Section 76(2) of the Act.

9. Accordingly, the petition stands dismissed as not maintainable.

10. Interim protection granted to the petitioner under order dated 13.07.2021, stands withdrawn.

11. However, in view of submission of learned counsel for the petitioner, it is observed that if the petitioner appears before the Court below and prays for bail, the same shall be considered on its own merits, in accordance with law, without being prejudiced by the present order.

12. By order dated 13.08.2021, the Court had called for an explanation from the Superintendent of Police, East Champaran with regard to why, despite the Court directing learned



APP to obtain copy of the case diary and the report, the same was submitted in the Registry of the Court, the Superintendent of Police, East Champaran, Motihari has submitted an explanation under Letter No. 398 dated 25.08.2021, in which it has been stated that the messenger upon reaching Patna had contacted learned APP who had asked him to submit the same in the Registry of the High Court as he was out of station. Learned APP submitted that the same was due to some misconception and communication gap.

13. Having regard to the aforesaid, the Court finds that there has been no deliberate or wilful laches on the part of the Superintendent of Police, East Champaran, Motihari in the matter. Accordingly, the explanation his accepted and the issue stands consigned.

(Ahsanuddin Amanullah, J.)

P. Kumar

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