

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.37203 of 2020

Arising Out of PS. Case No.-11 Year-2020 Thana- TISIAUTA District- Vaishali

Ranjeet Rai, (Male), aged about 50 years, S/O Late Nageshwar Rai, R/O Village - Husenipur, P.S. - Tisiauta, Dist - Vaishali

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Mrityunjay Kumar, Advocate
For the State : Mr. Braj Kishore Prasad, APP.

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 12-07-2021

The matter has been heard *via* video conferencing.

2. Heard Mr. Mrityunjay Kumar, learned counsel for the petitioner and Mr. Braj Kishore Prasad, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State.

3. The petitioner apprehends arrest in connection with complaint case i.e., C2A Case No. 11 of 2020 dated 15.01.2020, instituted under Section 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 the police on prior information that the petitioner was dealing in liquor went to his house, in the backyard of his house, 72 litres foreign liquor concealed with fire wood was recovered.



5. Learned counsel for the petitioner submitted that the recovery is from outside the house of the petitioner and due to village politics, he has been implicated. Further, it was submitted that the same is not from the conscious possession of the petitioner. Learned counsel submitted that the recovery is said to have taken place at 1:00 AM i.e., almost midnight and an independent witness has signed on the seizure list, which is highly improbable.

6. Learned APP submitted that the recovery is from the house of the petitioner, in the backyard, of huge quantity of liquor and thus, the present petition is not maintainable due to bar of Section 76 (2) of the Act which does not permit filing of any petition under Section 438 of the Code of Criminal Procedure, 1973 as, *prima facie*, an offence is made out under the Act. It was submitted that there is recovery of 72 litres of liquor from the house of the petitioner and on merits also the petitioner has committed an offence as dealing in liquor is a criminal offence in the State of Bihar. Learned APP submitted that in the FIR itself it is written that in the presence of independent witness and villagers who were present at the spot, it was disclosed by them that it was the petitioner who had run away and, thus, there is no discrepancy and further that law also



requires that whenever there are independent witnesses, they should be made seizure list witnesses which has been done in the present case and cannot be faulted.

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. Once the liquor is alleged to have been recovered from the house of the petitioner, clearly an offence would be made out under the Act and the present petition would thus, not be maintainable due to bar of Section 76(2) of the Act.

8. For reasons aforesaid, the petition stands dismissed, both on merits as well as on the ground of non-maintainability.

(Ahsanuddin Amanullah, J)

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