

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 2165 of 2021**

Arising Out of PS. Case No.-68 Year-2020 Thana- PUPRI District- Sitamarhi

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Dukha Chaudhary @ Dukha Chaudhari, aged about 56 years, Male, Son of Jageshwar Chaudhary, Resident of Village - Bailghat Pupri Bazar, PS- Pupri, District- Sitamarhi.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Manoj Kumar, Advocate
For the State : Mr. Anil Prasad Singh, APP

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**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT**

Date : 23-08-2021

The matter has been heard *via* video conferencing.

2. Heard Mr. Manoj Kumar, learned counsel for the petitioner and Mr. Anil Prasad Singh, learned Additional Public Prosecutor (hereinafter referred to as the ‘APP’) for the State.

3. The petitioner apprehends arrest in connection with Pupri PS Case No. 68 of 2020 dated 08.03.2020, instituted under Sections 272 and 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 and others is that when police on receiving information that some persons were selling liquor near Bailghat Pupri Bazar reached the spot,



on seeing the police jeep, 15-20 persons started running away and the *Chowkidar* took the name of 16 persons, including the petitioner, and further that when the hut of all the accused was searched, liquor was found and specifically from the petitioner's hut, 2.10 litres of Nepali liquor was seized.

5. Learned counsel for the petitioner submitted that only on suspicion he has been named and even the so-called recovery from the hut was not correct as the said hut is on the side of the road with which the petitioner has no concern. It was further submitted that the petitioner has no criminal antecedent.

6. On the aforesaid stand of learned counsel for the petitioner, on 22.07.2021, the Court had asked learned APP to obtain the up-to-date legible photocopy of the entire case diary of the present case from the Superintendent of Police, Sitamarhi as also a specific report with regard to whether the hut mentioned in the FIR, from which recovery has been made, belongs to the petitioner.

7. Learned APP submitted that the same has been received. It was submitted that as per the report, the hut was in the *palani* of the petitioner though the land was *Gair Mazarua Aam*. Learned APP submitted that the premises of many similarly situated persons was raided and seizure of liquor has been made. It



was submitted that once the recovery is from the premises belonging to the petitioner, the present petition would not be maintainable due to bar of Section 76(2) of the Act.

8. 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, both with regard to the FIR as also from the report of the Superintendent of Police, Sitamarhi, it has come that the hut was in the *palani* of the petitioner, *prima facie* an offence would be made out under the Act, though rebuttable at the time of trial. However, offence being made out, as has rightly been submitted by learned APP, the present petition under Section 438 of the Code of Criminal Procedure, 1973 would not be maintainable due to specific bar of Section 76(2) of the Act.

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

(Ahsanuddin Amanullah, J.)

P. Kumar

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