

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.10301 of 2021

Arising Out of PS. Case No.-288 Year-2020 Thana- PALASI District- Araria

Most. Susheela Devi, aged about 50 years, Female, Wife of Late Shiv Narayan Yadav @ Late Shivanand Yadav, Resident of Village-Hasanpur, P.S.- Palasi, District- Araria.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Mukesh Kumar Rana, Advocate
For the State : Mr. Zainul Abedin, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 02-09-2021

The matter has been heard *via* video conferencing.

2. The case has been taken up out of turn on the basis of motion slip filed by learned counsel for the petitioner, which was allowed.

3. Heard Mr. Mukesh Kumar Rana, learned counsel for the petitioner and Mr. Zainul Abedin, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State.

4. The petitioner apprehends arrest in connection with Palasi PS Case No. 288 of 2020 dated 06.09.2020, instituted under Section 30(a) of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as the 'Act').

5. The allegation against the petitioner is that on secret



information that the petitioner was keeping illicit liquor in her house for selling, when the police went to her house and searched, from the wooden hut outside her dwelling house stacked under hay, 10 bottles of Nepali Litchi wine, totalling 3 litres, was seized.

6. Learned counsel for the petitioner submitted that she is a lady and has no connection with the recovered wine as neither she was aware of the same nor knows about who had kept it. It was further submitted that she has no other criminal antecedent.

7. Learned APP submitted that the petitioner being a lady of the house was in command since she is a widow and, thus, she has to take responsibility of whatever happens on her property. It was submitted that in law, once recovery has been effected from the premises belonging to the petitioner, the bar of Section 76(2) of the Act would come into play and, thus, the present petition under Section 438 of the Code of Criminal Procedure, 1973 would not be maintainable.

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. In view of the fact that the recovery has been made from the premises



which is owned by the petitioner, *prima facie*, an offence being made out under the Act, the bar of Section 76(2) of the Act would apply.

9. For reasons aforesaid, the petition stands dismissed as not maintainable.

(Ahsanuddin Amanullah, J)

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