

(2021) 04 PAT CK 0109

In the Patna High Court

Case No : Criminal Miscellaneous No. 34644 Of 2020

Pradhan Hembram And Ors

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 17-04-2021

Acts Referred:

Indian Penal Code, 1860 — Section 272, 273
Bihar Prohibition And Excise Act, 2016 — Section 30(a), 76(2)
Code Of Criminal Procedure, 1973 — Section 438

Citation : (2021) 04 PAT CK 0109

Hon'ble Judges : Ahsanuddin Amanullah, J

Bench : Single Bench

Advocate : Md. Helal Ahmad, Amitesh Kumar

Final Decision : Disposed Of

Judgement

1. The matter has been heard via video conferencing.
2. Heard Mr. Md. Helal Ahmad, learned counsel for the petitioners and Mr. Amitesh Kumar, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State.
3. The petitioners apprehend arrest in connection with Dagarua PS Case No. 124 of 2020 dated 19.08.2020, instituted under Sections 272/273 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 petitioners is that from their house, various quantities of country-made liquor were recovered.
5. Learned counsel for the petitioners submitted that though in the FIR recovery has been shown from the house of the petitioners, but on the seizure list, there is no signature of any family member of the petitioners who were present in the house, which gives rise to doubt as to whether there was actual seizure from the house of the petitioners. Learned counsel submitted that there being basic

irregularity in the case, the petitioners be granted indulgence. It was further submitted that the petitioners have no criminal antecedent.

6. Learned APP submitted that as per the FIR, two independent witnesses of the locality have signed and further that one person who was caught from whom also seizure was made has also signed on the seizure list. It was submitted that the law requires only a witness and it is not that a family member of the accused, who may or may not be present, has to sign as any two persons are competent to be witnesses and when two persons in the present case are independent witness, the requirement of law stands fulfilled. Learned counsel submitted that once, as per the FIR, recovery is shown from the house of the petitioners, the present application under Section 438 of the Code of Criminal Procedure, 1973 would not maintainable in view of 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. As recovery is said to be from the house of the petitioners, prima facie, offence is made out and, thus, the bar of Section 76(2) of the Act would come into play.

8. For reasons aforesaid, the application stands disposed off as not maintainable.