

GAHC010180692024



2024:GAU-AS:10448

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Rev.P./343/2024

MODI DISTILLERY
AN UNIT OF MODI INDUSTRIES LIMITED, A COMPANY DULY
INCORPORATED UNDER THE INDIAN COMPANIES ACT 1956, HAVING ITS
REGISTERED OFFICE AT MODI NAGAR-201204, DIST. GHAZIABAD, UTTAR
PRADESH, REPRESENTED BY ITS AREA MANAGER/AUTHORIZED
REPRESENTATIVE, NAMELY, SRI PARAG JYOTI BORAGI, SON OF LATE
ROSHESWAR BORAGI, AGED ABOUT 43 YEARS, RESIDENT OF PROTECH
GALAXY, NOVA BLOCK, FLAT NO. 2E, SECOND FLOOR, NABAMILAN
PATH, SOUMITRAPUR, BYELANE NO. 13, BORSAJAI, GUWAHATI, ASSAM,
PIN-781028

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE SECRETARY TO THE DEPARTMENT OF EXCISE,
JANATA BHAWAN, DISPUR, GUWAHATI-06

2:PRANJAL PANGING

DEPUTY SUPERINTENDENT OF EXCISE
KAMRUP (METRO)
GUWAHATI CUM INVESTIGATING OFFICER
OF EXCISE CASE NO. NM/EX.01/202

Advocate for the Petitioner : MR. SAILENDRA DEKA, MS L RONGPIPI,MR JITENDRA DAS

Advocate for the Respondent : PP, ASSAM, MR. P N GOSWAMI, SR. SC, EXCISE DEPTT.

**BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND**

ORDER

Date : 24-10-2024

Heard Mr. B. Dutta, learned Senior Counsel for the petitioner and Mr. I. Borthakur, learned counsel on behalf of the learned Standing Counsel Mr. D. Gogoi for the Excise Department of Government of Assam.

2. The petitioner Sri Parag Jyoti Boragi, an authorized representative of Modi Distillery has filed this application under Section 442 read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS for short) challenging the order dated 16.07.2024 passed by the learned Judicial Magistrate First Class, Kamrup (M) in connection with Excise Case No. NM/EX.01/2023 Case No. 01/2023.

3. The impugned order dated 16.07.2024 passed by the learned Judicial Magistrate First Class, Kamrup (M) in connection with Excise Case No. NM/EX.01/2023 Case No. 01/2023 is reflected herein below :

“Modi Distillery vide pet. No. 2510/24 prayed for allowed to sell the 300 cases of “Rockford Reserve Fine & Rare Whiskey @ 750 ml” after obtaining the required approval from the Excise Authority for affixing the already procured holograms over the said whiskey bottles after modifying the condition stipulated in the order of this Court dated 08.08.2023.

Upon perusal of the CR, it transpires that vide order dated 08.08.2023 this Court had directed the I/O to give interim custody of the seized 300 cases of “Rockford Reserve Fine & Rare Whiskey @ 750 ml” in favour of Modi Distillery after due and proper verification and upon execution of zimma bond of Rs. 10,00,000/- with a condition that the same is to be produced before the Court as and when directed to do so.

Subsequently, the Superintendent of Excise, Kamrup (M) filed an appeal against the said order of this Court dated 08.08.2023 and the Hon'ble Gauhati High Court vide judgment and order dated 08.04.2024 in Crl. Pet. No. 1162/2023 was pleased to dismiss the criminal petition filed by the Department of Excise. With an observation that Modi Distillery is willing to produce the said whiskey as and when required by the Court during the period of Investigation and trial and

that, there appears to be no justified grounds for any suspicion that the said whiskey will be available to the public (paragraphs 38 and 40).

As such, in view of the observation of the Hon'ble Gauhati High Court in the judgment and order dated 08.04.2024 in Crl. Pet. No. 1162/2023, the prayer of Modi Distillery for modification of the condition of interim custody of the said seized 300 cases of "Rockford Reserve Fine & Rare Whiskey @ 750 ml" stands rejected.

Pet. No. 2510/24 is thus disposed off."

4. Learned counsel for the respondent laid stress in his argument that the impugned order does not require interference as the order has been correctly passed because this Court vide order dated 08.04.2024 in Crl. Pet. No. 1162/2023 has observed that :

"39. While passing the impugned order dated 08.08.2023, the learned Magistrate has directed the respondent No. 2, attorney holder of the respondent No. 1 to produce the bottles given in zimma to the respondent No. 2 as and when required by the Court. Thus, there appears to be no justified ground for any suspicion that the whiskey will be available to the public.

40. This puts the suspicion of the petitioners to rest, because the impugned order itself reflects that the 300 cases of Rockford whiskey were given in zimma to the respondent Company on their execution of a bond of Rs.10,00,000/- (Rupees Ten Lacs) under the condition that the Company is to produce the same in the Court as and when directed. As the respondents have resisted the prayer for setting aside the order impugned by the petitioners, it appears that they are not aggrieved by the said order and they are also willing to produce the whiskey as and when required by the Court during the period of investigation and trial."

5. It is submitted by the learned counsel for the respondent that in the garb of a petition under Section 442 read with Section 528 of BNSS, 2023, the

petitioner is trying to get the order of this Court modified to their advantage.

6. On the contrary, learned counsel for the petitioner has submitted that this Court has not set conditions to produce the bottles of liquor as and when required by the Court. The conditions were imposed by the learned Trial Court which can be reviewed.

7. The petitioner has relied on the decision of High Court of Judicature at Delhi in *Sandeep Singh Vs. State of NCT of Delhi and Another reported in (2022) SCC OnLine Del 1466* wherein it has been observed that :

“15. There can be no doubt, an order under [Section 451](#) Cr.P.C. is of an interlocutory nature, since the whole purpose is for safe custody of the goods/property during the pendency of the trial, as it is [Section 452](#) Cr.P.C. which would come into play, when the goods/property is to be disposed of at the conclusion of the trial. The Trial Court would not be powerless to modify orders of custody as per changed circumstances. The Trial Court has the powers to recall entrustment, as held in *Smt. Anisa Begum* (supra). For instance, there could be circumstances where the *superdar* is not in a position to keep the custody of the goods/property and seeks to surrender it into the court. Would the Trial Court be powerless to hand it over to some other person on the same terms as earlier or on different modified terms? Similarly, where the court finds that the initial order was passed on account of certain mistaken notions, as in the present case, that the partnership firm was in existence and the petitioner alone had a right to the moulds and also in view of the fact that the respondent No.2 who also had an equal status as a partner in the erstwhile partnership firm to claim custody, was denied even a hearing, it cannot be said that the modification of this interlocutory order would be possible only, by approaching the High Court under [Section 482](#) Cr.P.C. Orders that would only smoothen the process of trial cannot be rendered so complicated. In fact, the power to modify orders passed under [Section 451](#) Cr.P.C., is inherent in the provision as the purpose is only safe custody and production "during trial". This is unlike the orders of summoning in respect of which *Adalat Prasad* (supra) and subsequent judgments have held that recall of orders is not possible.”

8. It is further submitted by the petitioner that the petitioner is incurring

heavy loss as there is an order of the learned trial Court dated 08.08.2023 in connection with Excise Case No. NM/EX.01/2023 allowing the zimma of 300 cases i.e. 3,600 bottles of the "Rockford Reserve Fine & Rare Whiskey 750 ml" to the petitioner after due and proper verification and upon execution of a bond of Rs.10,00,000/- (Rupees Ten Lacs) to produce the same in the Court as and when directed to do so.

9. It is further submitted that as the petitioner requires to take zimma of the of the bottles and affix the holograms to sell the bottles as per proper procedure, the petitioner may be given an opportunity for modification of the conditions under which the bottles were given in zimma to the petitioner by the learned JMFC, Kamrup (M).

10. At this juncture, I do not find it appropriate to delve into the merits of this case. The order of this Court in paragraph Nos. 38 to 40 of order dated 08.04.2024 passed in CrI. Pet. No. 1162/does not impose any conditions to produce the 300 cases of Rockford whiskey containing 3600 bottles as and when required by the learned trial Court. This Court has observed that while passing the impugned order dated 08.08.2023 the learned Magistrate has directed the respondent No. 2, Attorney Holder to produce the bottles as and when required which puts the suspicion of the respondents to rest that whiskey bottles may be available to the public. This observation of this Court does not impose any conditions to produce the bottles before the Magistrate as and when required by the Court of Judicial Magistrate First Class, Kamrup (M). Thus there is no hindrance to modify the conditions under which the bottles were given in zimma to the petitioner by the learned Judicial Magistrate First Class, Kamrup (M). The learned JMFC may therefore consider the petitioner's prayer for

modification of the conditions under which the bottles were given in zimma to the petitioner and pass any appropriate order which the learned Magistrate deems fit and proper.

11. In terms of the above observation, this Criminal Revision Petition is disposed of.

12. No order as to costs.

JUDGE

Comparing Assistant