

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 2889 OF 2014

Satish Bhalchandra Wani .. Applicant

Versus

The State of Maharashtra & Anr. .. Respondents

.....
Mr Chatterji, Advocate for the applicant
Mrs Diggikar, APP for respondent/State
.....

**CORAM : A.V.NIRGUDE &
V.L. ACHLIYA, JJ.**

DATED : 22.07.2016.

PER COURT :

1. The applicant is accused No. 3 in Crime No. 346 of 2013 registered on 01.12.2013 at Shirpur Police Station, Dist. Dhule for offence punishable under Section 65(f) of the Bombay Prohibition Act and under Section 328 of the Indian Penal Code. It is alleged that, the applicant and others were involved in trade of illicit liquor. All three of them were caught possessing illicit liquor. The question in this case is;

whether the allegations levelled against the applicant would attract provision of Section 328 of the Indian Penal Code. The answer is in negative. Section 328 of the Indian Penal Code reads as under:

328. Causing hurt by means of poison, etc., with intent to commit an offence.—Whoever administers to or causes to be taken by any person any poison or any stupefying, intoxicating or unwholesome drug, or other thing with intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence or knowing it to be likely that he will thereby cause hurt, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

2. On plain reading of Section 328 of the Indian Penal Code it is revealed that, the provision is attracted only when in an incident a culprit is administered poisonous, stupefying, intoxicating or unwholesome drug, or other thing with intent to cause hurt to such person. Thus, the 'administration' of substance with intent to cause hurt are the main ingredients of said offence. Mere possession of poisonous or intoxicants does not attract the offence under Section 328 of the IPC. In the instant case, the prosecution has approached with a case that, accused was found in possession of country made liquor. Thus, on the face of F.I.R. registered against the present applicant

though the offence u/s 65(f) is made out, but by no stretch of imagination offence u/s 328 of the IPC can be said to be attracted.

3. In view of above, the applicant has made out a case to invoke inherent jurisdiction u/s 482 of the Cr.P.C. to quash F.I.R. to the extent of Section 328 of the IPC. In the result, the application is allowed to the extent of quashing of offence u/s 328 of IPC as against the applicant. However, the case to proceed against the applicant for offences other than offence u/s 328 of IPC.

[V. L. ACHLIYA]
JUDGE

[A. V. NIRGUDE]
JUDGE