

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.1378 OF 2001

Dayal Marumal Bhojwani
through Akash Traders,
residing at Lokhandwala Complex,
Andheri (West), Mumbai.

..Applicant
(Org. Accused)

v/s.

The State of Maharashtra .

..Respondent
(Org. Complainant)

**WITH
CRIMINAL APPLICATION NO. 1379 OF 2001**

Meghnath Dwarkanath Arora
Prop. Arora Enterprises, Amravati
v/s.

..Applicant
(Org. Accused)

The State of Maharashtra .

..Respondent
Org. Complainant)

Mr.D.B.Sawant with Vinayak Salokhe for the Applicants.
Mr.Arfan Sait with Mr. P.H. Gaikwad, APP for the Respondent-State.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
RESERVED ON : 9th December, 2016.
PRONOUNCED ON:16th December, 2016.**

JUDGMENT:

1. By these applications filed under Section 482 of Cr.P.C. the

applicants have challenged the order dated 26.11.1999, whereby the learned Chief Judicial Magistrate, Thane, rejected the applications for discharge filed under Section 239 of Cr.P.C. in C.C.No.3248 of 1998.

2. The applicant in Cri. Application No.1378 of 2001 is the accused no.14, whereas the applicant in Cri. Application No.1379 of 2001 is accused no.12 in C.C.No. 3248 of 1998, filed under Section 66(1)(b), 65, 81, 83, 98 and 108 of the Bombay Prohibition Act. These applicants had sought discharge on the ground that they had purchased imported liquor upon making payment by cheque under valid bill and transport pass. The applicant further stated that the first purchaser who had transported the liquor from the State of Goa to the State of Maharashtra, was liable to pay the excise duty, and that they being the subsequent purchasers, who had only transported the liquor within the State, were not liable to pay any duty or tax. The applicants further claim that they had followed the procedure meticulously and that there is no prima facie material against them for the alleged offences.

3. The learned Judge, after considering the grounds raised by the

applicants- (A-14 and A-12 respectively) dismissed the applications for discharge on the ground that the excise department had seized a huge contraband from the godown of R.T.Traders, Bhiwandi. The learned Judge further held that the said contraband was imported without paying the excise duty and thereafter in connivance with A15, a serving ex-officer the said contraband was transported to wholesale dealers and retailers at various places in Maharashtra by using forged transport passes. The learned Judge has held that the applicant-accused being conspirators have passed the goods without paying excise duty. The learned Judge therefore held that there is prima facie material to proceed against the applicants and consequently dismissed the applications for discharge. Being aggrieved by the said orders, the applicants have invoked the jurisdiction of this Court under Section 482 of Cr.P.C.

4. Shri Sawant, the learned Counsel for the applicants has submitted that Revision Application nos. 43 of 2000, 44 of 2000 , 45 of 2000 and 49 of 2000, filed by the co-accused have been allowed by this court by judgment dated 23.7.2009 whereby the order passed

by the learned CJM has been quashed and set aside. Consequently, the co-accused Rajkumar Govindani, Jethchand Tekwani, Kamlesh Vaswani and Pitambar Tekwani have been discharged of these offences. The learned counsel for the applicants has further submitted that the allegations leveled against the applicants are similar and that no case is made out against the applicants, and as such these applicants are also entitled for discharge. He has further submitted that this court being a co-ordinate bench cannot take a contrary view from the one taken by this court in the above referred revision applications. In support of this contentions he has relied upon the decisions in the case of *G.L.Batra vs. State of Haryana 2013 AIR SCW 6042* and *Bir Bajrang Kumar v, State of Bihar & Ors. AIR 1987 SC 1345*.

5. Learned APP Shri Arfan Sait has contested the applications vehemently. Relying upon the decisions of the Apex Court in *State of Maharashtra & Ors. vs. Ishwar Piraji Kalpatri AIR 1996 SC 722* and *State of Bihar vs. Rajendra Agarwalla (1996) 8 SCC 164* he has submitted that this is not a stage to embark upon an inquiry as to

the probability, reliability or genuineness of the allegations in the complaint/FIR. He contends that the inherent powers can be exercised only when the material collected during investigation taken at its face value does not disclose the offence alleged. appreciate the evidence and/or to give any findings on merits of the matter. He has relied upon the decision of the Apex Court in

6. I have perused the record and considered the submissions advanced by the learned counsel for the applicants and the learned APP for the State.

7. The records reveal that on 28.11.1995, on receipt of reliable information, the State Excise Flying Squad, Konkan Division had carried out raid in the premises of Ramesh Chhabria (A1), proprietor of M/s. R.T.Traders, at Kondgaon, Taluka Bhivandi, District Thane and recovered stock of foreign liquor manufactured by National Distillery, Goa. The said liquor was brought from Goa to Maharashtra by forging passes/ license and without paying excise duty. The accused nos.1 to 3 were arrested and the liquor was seized under panchanama drawn at the spot.

8. It is alleged that the accused no.1 had imported the foreign liquor without paying excise duty, and had sold the said liquor to M/s. Amit Wines (A6). It is the case of the prosecution that the applicant and several other persons holding licenses in form FL-I purchased the said foreign liquor from Amit Wines (A6).

9. It is pertinent to note that the accused had not imported the said foreign liquor. They were also not the first receivers. Consequently, the applicant accused were not liable to pay the excise duty on the liquor. The only allegation against the applicants is that they had purchased the said liquor from M/s. Amit Wines. It is not in dispute that the applicants are whole sellers and were having valid licenses FLI granted under Rule 5 of Bombay Foreign Liquor Rules, 1958. They had purchased the liquor from A6 under valid license upon making payment by cheque. The bills contained a certificate in form BB duly signed by A6 stating that excise duty imposed under Government notification had been paid on the foreign liquor sold under the said bill/cash memo. There is no prima facie material to indicate that the applicant accused had knowledge that A1 or A6 had

evaded payment of excise duty or that they had conspired in any manner in commission of the offence. The material on record on the face of it does not disclose the essential ingredients of 'conspiracy' or 'abetment'. Hence, the applicant accused cannot be prosecuted for the alleged offences solely on the ground that they had purchased the liquor which was imported by the co-accused by evading excise duty/tax

10. It is also pertinent to note that the co-accused who were charged with same offences on the basis of the same facts and circumstances have already been discharged by this Court vide order dated 23.7.2009 in Revision Application nos. 43 of 2000, 44 of 2000 , 45 of 2000 and 49 of 2000. The allegations against the applicants and the said co-accused are similar in all respects. There are no distinguishing factors as regards the charges levelled and the material relied upon to differentiate the case of the applicants from the case of the co-accused, who have been discharged. Therefore on the principle of parity, the applicants also deserve to be discharged.

11. Under the circumstances and in view of discussion supra, the applications are allowed. The impugned order dated 26.11.1999 passed by the learned Chief Judicial Magistrate, Thane is quashed and set aside qua the present applicants.

(ANUJA PRABHUDESSAI, J.)