IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

CRIMINAL APPICATION NO. 3088 OF 2008

1. Shri. Girish Prabhudayal Agrawal
Age 44 years, Occu. Business,
R/o. 5, Agrawal Nagar, Dhule.

2. Shri. Satishkumar Ramlal Agrawal (HUF),
Age 51 years, Occu. Business,
R/o. 3228, Agra Road, Dhule.

3. Shri. Deepak Tarachand Agrawal,
Age 38 years, Occu. Business,
R/o. 8/13, Yashwant Niwas Road,
Indore (Madhyapradesh) **....Applicants.**

Versus

The State of Maharashtra
Inspector of State Excise Divisional
Flying Squad, Nasik **....Respondent.**

Mr. Joydeep Chatterji, Advocate for applicants.

Mrs. V.S. Choudhary, APP for respondent/State.

WITH
CRIMINAL APPICATION NO. 3094 OF 2008

Shantilal Balkisandas Wani
Age 51 years, Occu. Working as
Manager of Shrikrishna Khandsari
Sugar Mills, R/o. Taloda,
Dist. Nandurbar. **....Applicant.**

Versus

The State of Maharashtra
Inspector of State Excise Divisional
Flying Squad, Nasik **....Respondent.**

Mr. Joydeep Chatterji, Advocate for applicants.

Mrs. V.S. Choudhary, APP for respondent/State.

**CORAM : T.V. NALAWADE AND
K.L. WADANE, JJ.
DATED : JULY 17, 2018.**

JUDGMENT : [PER T.V. NALAWADE, J.]

1) Both the proceedings are filed under section 482 of Criminal Procedure Code for relief of quashing of F.I.R. No. 98/2008 registered with State Excise Department of Nashik Division. Both the sides are heard.

2) The crime is registered on the basis of report given by Inspector of Excise. This department had specific information that Shrikrishna Khandsari Sugar Mills of Taloda, District Nandurbar was illegally exporting molasses and by using molasses in Madhya Pradesh, there was manufacturing of liquor. On that day, officers visited the factory. They noticed that one tanker bearing No. MPO-GKD-1032 loaded with molasses and two empty tankers bearing Nos. MPO-GKC-8303 and MPO-GKC-6700 were present in the campus of factory. Samples of molasses which was already filled in vehicle No. MPO-GKD-1032 were taken. It was contended by a partner of the firm, the owner of the factory that it was different substance and not the molasses. Report in respect of the samples was obtained and the laboratory has confirmed that it was molasses. The three tankers were taken over with the molasses. With the

tanker driver, there was proforma bill of this factory dated 24.6.2008 showing that the molasses was sold to a concern from Indore, Madhya Pradesh.

3) There was no license with the factory to export the molasses and the aforesaid record and circumstances showed that it was illegally exporting the molasses. When statement was recorded under Excise Act, the partners admitted that they had exported molasses to other States and the quantity exported was about 100 to 150 metric tones. They had not maintained register NB which needs to be maintained as per the conditions of license and thus, they were involved in the activity of illegally exporting molasses to other States. Due to such activity, the State lost huge revenue and the charges which could have been recovered for export.

4) The learned counsel for applicants submitted that applicants had given power of attorney to one Wani and Wani was running the business of factory. Copy of power of attorney dated 18.6.2008 is produced by the applicants. The raid was effected on 24.6.2008. The so called power of attorney shows that stamp was sold on 21.4.2008 by the treasury and it was purchased from the stamp vendor by Shrikrishna Khandsari Sugar Mills on 28.4.2008. As this document appears to be created just 6 days prior to date of

raid, the investigation in to creation of this document also needs to be done.

5) There is copy of partnership agreement showing that all the three applicants were partners of the firm running the aforesaid factory and they were operating bank account and they were running the business of partnership concern. Clause 10 of partnership agreement is relevant in that regard. The record shows that applicant No. 1 Girish Agrawal was present on the spot when Excise Officer effected raid. Due to these circumstances, it cannot be said that present applicants were not running the business and they were not involved in illegal activity. They have filed Criminal Application No. 3088/2008 and Wani the person in whose favour power of attorney is executed has filed Criminal Application No. 3094/2008.

6) The learned counsel for the applicants took this Court through some observations made by the Apex Court in the case reported as **AIR 1998 SC 2327 [State of Haryana Vs. Brij Lal Mittal] and AIR 1981 SC 872 [State of Karnataka Vs. Pratap Chand].** The learned counsel submitted that as per the provisions of Companies Act and similar provisions made in Maharashtra Prohibition Act, it is necessary for the prosecution to show that the

accused persons were running the business or they had knowledge about the illegal activity. There is no dispute over the proposition. But the aforesaid submissions made for the applicants and the record show that the applicants of the present proceedings were running the business. They created document of power of attorney, but it cannot be said that they were not involved in the illegal activity. As the record is taken over showing that the molasses was to be sent to other State in the past also such export was made and as there was no such license obtained at the relevant time, the offences are committed under the provisions of Prohibition Act (Sections 79, 80, 82 and 83). Submissions made and the reply affidavit show that in the past also, the applicants were found indulging in similar activity and after interception of the vehicles of this factory, it was noticed that they were transporting the molasses to other State. There are statements to show that they were regularly exporting the molasses to Kamal Trading Company, Indore. In view of these circumstances, this Court holds that no relief can be granted in favour of applicants. In the result, both the applications stand dismissed. Interim relief is vacated. Rule stands discharged.

[K.L. WADANE, J.] **[T.V. NALAWADE, J.]**

ssc/