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

CRIMINAL APPLICATION NO. 496 OF 2016

1. Subhash Nanhalal Gupta
Gupta Paints & Hardware, Shop no.9,
Plot no.323/324, S. V. Road,
Andheri (West), Mumbai
2. Sameer Ismail Ansari
Gupta Paints & Hardware, Shop no.9,
Plot no.323/324, S. V. Road,
Andheri (West), Mumbai

...Applicants
(Ori. Accused)

Versus

The State of Maharashtra
through Inspector of State Excise,
Flying Squad No.1, Mumbai Suburban,
District – Mumbai

...Respondent
(Ori. Complainant)

Mr. Dnyanadeo B. Sawant, for the Applicants.

Ms. Prajakta Shinde, APP for the State/Respondent.

**CORAM : RANJIT MORE &
SMT. BHARATI H. DANGRE, JJ.**

Reserved on : 28th AUGUST, 2018

Pronounced on : 8th OCTOBER, 2018

JUDGMENT :- (Per Smt. Bharati H. Dangre, J.)

1. Rule. Rule made returnable forthwith. Heard by consent of the parties.
2. The applicant no.1, who is carrying business under the

name and style of M/s. Gupta Paints and Hardware and dealing in purchase, possession, sale of French polish, thinner and other solvents manufactured under the provisions of the Bombay Denatured Spirit Rules, 1959 and the Bombay Spirituous Preparations (Manufacturing) Rules, 1955 and applicant no.2, who is an employee of applicant no.1, have approached this Court for quashing and setting aside the First Information Report ("FIR", for short) registered against them. The applicants have sought to invoke the jurisdiction of this Court vested in exercise of its inherent power and have prayed for quashing of CR No.234 of 2015 filed under Section 65(d), 67, 81 and 83 of the Bombay Prohibition Act, 1949.

3. The Applicants, who deal with various solvents carries out the business at Shop no.9, S.V. Road, Andheri (West), Mumabi. It is the case of the applicants that the Inspector of State Excise, Flying Squad no.1, visited the premises and foisted the applicants with charges under the Bombay Prohibition Act. The applicants came to be arrested on the date of lodging of FIR on 27th October, 2015 and the goods worth Rs.25,285/- came to be seized. The applicants were subsequently released on bail by the Metropolitan Magistrate.

The specific case of the applicants is that the lodging of the FIR and registration of offences against the applicants under Section 65(d), 67, 81 and 83 of the Bombay Prohibition Act amounts to an abuse of process of law.

To demonstrate the same, it is the case of the applicants that one Shri. Ketan K. Bhayani of M/s. M. K. Traders appointed the applicant no.1 as stockists/dealer for sale of French polish. According to the applicants, Shri. Ketan Bhayani had obtained orders from this Hon'ble Court in Writ Petition No.2193 of 2008 to the effect that he does not require any licence for possession, sale and purchase of the denatured spirit and spirituous preparations. According to the applicants, in the said Writ Petition, an interim relief came to be granted in terms of prayer clauses (e) and (f) in favour of Shri. Ketan Bhayani on 2nd June, 2018 and the Petition came to be admitted. Prayer clause (e) in terms of which an interim relief was sought and granted reads as follow:

“(e) Pending the hearing and final disposal of this petition, the Respondents their agents, servants, or anybody claiming through them be restrained by an order of injunction prosecuting the Petitioner or their agent, suppliers, sellers, stockists for not holding the licence under the Bombay Prohibition Act and the Bombay Denatured Spirit Rules, 1959 and the Respondent be directed to allow the Petitioner to

purchase the denatured spirit, transport, import, export and sell the same, store and possess the same an manufacture the same without any State Excise Licence pass authorization so also to his stockists, agents, purchasers and sellers.”

According to the applicants, the Excise authorities, in terms of the said order passed in Writ Petition No.2193 of 2008, were restrained from prosecuting the Petitioner Shri. Ketan Bhayani or his stockists, agents, purchasers and sellers, for not holding licence under the Bombay Prohibition Act and the Bombay Denatured Spirit Rules. It is the specific case of applicant no.1 that he was appointed as a stockists/dealer of Shri. Ketan Bhayani and he has placed on record an appointment letter issued to him to that effect and based on the interim order passed by this Court in Writ Petition No.2193 of 2008, the specific case of the applicant is that he being a stockists of M/s. M. K. Traders, he is also covered by the interim relief in terms of prayer clause (e) granted by this Court by way of an interim order.

Mr. Sawant, the learned Advocate appearing for the applicants would submit that applicant no.1 is purchasing the industrial solvents, French polish, thinner and other articles manufactured from the denatured spirit and he would submit

that denatured spirit being an industrial alcohol do not fall within purview of Bombay Prohibition Act. The learned Counsel for the applicants would place reliance on the judgment of the Hon'ble Apex Court in the case of ***State of Uttar Pradesh vs. VAM Organic Chemicals Ltd***¹., wherein a proposition of law has been laid down to the effect that once the spirit is denatured then the State is divested of its power to regulate the same and it is then governed by the Industries (Development and Regulation) Act, 1951. The learned Counsel would submit that an interim order granted in favour of Mr. Ketan Bhayani is passed following the order passed by the Hon'ble Apex Court in the case of VAM Organic and also the decision of the Apex Court in the case of ***Bihar Distillery vs. Union of India & Ors.***². In such circumstances, it is the specific submission of the learned Counsel for the applicants that the French polish, industrial solvent, thinner and other spirituous preparations are governed by the provisions of Industries (Development and Regulation) Act, 1951 and therefore the applicants could not have been charged with the offences punishable under the Bombay Prohibition Act. Apart from this, the learned Counsel

1 AIR 2003 SCW 5463

2 AIR 1997 SC 1208.

also placed reliance on the latest judgment delivered in a group of Writ Petitions by a Division Bench (Justice A. S. Oka and Justice Riyaz Chagla JJ) of this Court on 13th December, 2017 and the learned Counsel would urge that the Bombay Denatured Spirit Rules, 1955, insofar as they regulate the possession, use, sell, import, export and transport of denatured spirit after denaturation have been struck out by this Court as unconstitutional. The learned Counsel has placed on record the judgment of the Division Bench of ***M/s. Arss Biofuel Pvt. Ltd. vs. State of Maharashtra and ors. in Writ Petition No.8548 of 2004***. It is the specific submission of the learned Counsel that in light of the said judgment, the FIR registered against the present applicants and presently pending before the Metropolitan Magistrate, Bandra, Mumbai, deserves to be quashed and set aside in exercise of power conferred under Section 482 of Criminal Procedure Code.

4. We have also heard Ms. Prajakta Shinde appearing for the Respondent, State of Maharashtra, who does not dispute the legal position.

5. With the assistance of the respective Counsels, we have carefully perused copy of the criminal application along with its

annexures and also the judgment tendered on record by the learned Counsel for the applicants in Writ Petition No.8548 of 2004.

The applicants have been charged with offences under Section 65(d), 67, 81 and 83 of the Bombay Prohibition Act. Perusal of Section 65(d) of the said Act would reveal that it deals with penalty for illegal import etc. of intoxicant or hemp and it is a penal section which punishes the contravention of the provisions of the Act or any rule or regulation or order made or any licence, pass, permit, or authorization granted therein and clause (d) deals with bottling of potable liquor. Section 67 of the said enactment prescribes penalty for alteration or attempting to alter denatured spirit and this section penalizes an act of altering or attempting to alter any denatured spirit or possession of any spirit in respect of which there is a knowledge or reason to believe that any such alteration or attempt has been made and on conviction imposes a penalty. Sub-section (2) of Section 67 raises a presumption in favour of the prosecution that it shall be presumed, until the contrary is proved, that the alteration or attempt to alter any denatured spirit was done, with the intention that such spirit may be used

for human consumption as intoxicant liquor. Section 81 provides for penalty for attempt or abetment and Section 83 prescribes penalty for conspiracy. The applicants are charged with the said Sections and the substantive allegation is about alteration of the denatured spirit in contravention to Section 21. It would be necessary to reproduce Section 21 which reads thus:

“Section 21: Alteration of Denatured Spirit :

No person shall-

- (a) alter or attempt to alter any denatured spirit by dilution with water or by any method whatsoever, with the intention that such spirit may be used for human consumption, whether as a beverage or internally as a medicine or in any other way whatsoever; or
- (b) have in his possession any denatured spirit in respect of which he knows or has reason to believe that such alteration or attempt has been made.”

Perusal of Section 21 would reveal that any alteration or attempt of any alteration of any denatured spirit by dilution with an intention that such spirit may be used for human consumption whether as a beverage or as medicine or in any other way, is prohibited. Similarly, no person shall have in his possession any denatured spirit when he has reason to believe that such alteration or attempt has been made to alter the denatured spirit.

The denatured is defined in Section 2(10) to mean, subjected to a process prescribed for the purpose of rendering unfit for human consumption. Section 10(a) defines denatured spirituous preparations as follows:

“Section 2(10a) : "denatured spirituous preparation" means any preparation made with denatured spirit 3[or denatured alcohol] and includes lacquers. French Polish and varnish prepared out of such spirit or alcohol.”

6. The Bombay Prohibition Act which relating to promotion and enforcement of and carrying into effect the policy of prohibition, prohibits manufacture of liquor, its sell, import, export, transport etc. and it shall be lawful to import, export, transport, manufacture, sell by process, use or consumption any intoxicant or hemp in the manner and to the extent provided by the provisions contained in the Act, Rules, Regulations or orders made or in accordance with the terms and conditions of licence, permit, pass or authorization granted therein.

As far as denatured spirit is concerned, a prohibition is contained in Section 21 and in respect of alteration of denatured spirituous preparations, the prohibition is contained in Section 21(a). It is the case of the applicants that he is

appointed as a stockists/dealer and he deals in purchase, possession, sell of French polish, thinner and other solvents which are manufactured under the provisions of the Denatured Spirit Rules, 1959 and the Bombay Spirituous Preparations (Manufacturing) Rules, 1955. The Hon'ble Apex Court in the case of VAM Organic (supra) dealt with the issue of licence for the possession of denatured spirit under the Denatured Spirit Rules, 1976 applicable in the State of Uttar Pradesh and the issue which came up before the Apex Court was about the legislative competence of the State Legislature to regulate the industrial alcohol. On consideration of the legislative competency of the parliament and the State Legislature, the Hon'ble Apex Court concluded that the State is competent to levy fee for the purpose of ensuring that industrial alcohol is not surreptitiously converted into potable alcohol so that State is not deprived of revenue on the sale of potable alcohol and the public is protected from consuming such illicit liquor. However, it also held that this power stops with denaturation of the industrial alcohol and further assuming that the denatured spirit made by whatever process be renatured and, then converted into potable liquor this would not give the State

legislature the power to regulate it. The Hon'ble Apex Court was dealing with a company which was manufacturing organic chemicals such as ascetic acetate, ascetic hydrochloric and vinyl acetate at its chemical plant and the main raw material for manufacture of the organic chemicals was fuel alcohol (industrial grade) which was produced by mollases. The Respondent had its own distillery for producing industrial alcohol and this distillery was registered under the provision of Industrial (Development and Regulation) Act, 1955. The entire quantity of industrial alcohol was "denatured", before it left the distillery and was carried in pipe to the chemical plants and this denatured industrial alcohol was subjected to levy by the Uttar Pradesh Excise Act, 1910. The Hon'ble Apex Court on consideration of the entire gamut of the matter held that the State is not competent to impose a levy and regulate denaturation of the industrial alcohol and it also held that industrial alcohol for industrial purpose falls within the exclusive control of the union and denature spirit is wholly and exclusively alcohol. Reluctantly the levy by the State Legislature was held to be invalid.

Based on the judgments of the Hon'ble Apex Court, this

Court granted relief in favour of M/s. M. K. Traders, who had appointed the applicant no.1 as dealer for supplying French polish. While appointing the applicant no.1 as a dealer, M/s. M. K. Traders had intimated that in view of the interim order obtained by him, the applicant no.1 as a dealer/stockists do not require any licence for possession, sell, purchase of the denatured spirit and the denatured spirituous preparations. The interim order passed by this court on 2nd June, 2008 in favour of M/s. M. K. Traders, permitted the Petitioner M. K. Traders to purchase the denatured spirit, transport, import, export and sell the same and store and possess the same and manufacture the same without requirement of any licence/pass/authorization from the State Excise Department and so was in the case of his stockists, agents, purchasers and sellers. In the light of aforesaid circumstances, applicant no.1 could not have been clamped with the offences under Section 65(d), 67 of the Bombay Prohibition Act.

7. Reliance on the judgment of this Hon'ble Court in the Writ Petition No.8548/2004 in a group petition also advances the case of the present applicants. This Court was called upon to test the validity of Bombay Denatured Spirit Rules, 1959 which

purport to regulate the possession, use, sell, import, export and transport of denatured spirit after denaturation. The Petition also sought directions that the Petitioners who are manufacturers of denatured spirit do not require licence under the Bombay Prohibition Act, 1949 for sell, purchase, transport, possession, storage, dehydration, import, export of denatured spirit under the Act. The Division Bench of this Court relying on the judgment of the Hon'ble Apex Court in the case of VAM Organic declared the Bombay Denatured Spirit Rules, 1959 to the extent they regulated the possession, use, sell, import, export and transport of denatured spirit and specifically Rules 23 to 62 as *ultra vires* the constitution and has struck down the said rules. The Division Bench of this Court has also issued a declaration to the effect that there shall be no licence required under the Bombay Prohibition Act for sell, purchase, transport, possession, storage, dehydration, import or export of the denatured spirit.

In the light of aforesaid authoritative pronouncement, we are of the firm opinion that the continuation of the prosecution of the applicants under the provision of the Bombay Prohibition Act in alleged contravention of Section 21 is

nothing but an abuse of process of Court since the applicants were charged of being in possession of French polish, which is manufactured under the provisions of Bombay Denatured Spirit Rules, 1959 and once the rules itself have been held to be *ultra vires* and unconstitutional and it has been held that the State is not competent to regulate the use of industrial alcohol, then the condition of possession of licence is completely ousted and rendered nugatory.

In such circumstances, in view of the aforesaid discussion the application must succeed. Resultantly we quash and set aside the proceeding pending before the Metropolitan Magistrate, 32nd Court, Bandra, Mumbai pursuant to CR No.234 of 2015 filed under Section 65(d), 67, 81 and 83 of the Bombay Prohibition Act.

8. The application is allowed in terms of prayer clause (a).
Rule made absolute.

[SMT. BHARATI H. DANGRE, J.]

[RANJIT MORE, J.]

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