

Vidya Amin.

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

CRIMINAL WRIT PETITION NO. 4398 OF 2018

M/s. Ocean King Distillers & Anr. ... Petitioners
VS.
The State of Maharashtra ... Respondent

Mr. Kafil Ahmed Khan, Advocate for the petitioners.
Mrs. Rutuja Ambekar, APP for the respondent/State.

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: 29th October, 2018**

P.C. :

Rule. Rule made returnable forthwith. By consent, Writ
Petition is heard finally and decided at the stage of admission.

2. This Writ Petition is filed for modification of the order dated
27th July, 2018 passed by the learned Sessions Judge, Phalghar
that instead of furnishing bank guarantee either indemnity bond or
undertaking be accepted for releasing the goods seized in
Maharashtra.

3. The respondent is the State Excise Department, Border
Checkpoint, Talasari. The police has seized one truck on 8th
March, 2018, as they were carrying liquor from Goa to Dadra

Nagar Haveli through State of Maharashtra without having Through Transport pass. Thus, the petitioners are prosecuted for the offences punishable under sections 29, 65(A), 65(e), 81, 83 and 108 of the Bombay Prohibition Act of 1949 and under section 5 of Maharashtra Through Transport Licence Rules of 1997 in C.R. No. 4 of 2018 filed by Talasaria Excise Department. The petitioners have applied under section 451 of Cr. P.C. for return of property, as some portion of liquor is perishable. The learned Magistrate rejected the said application against which Criminal Revision No. 20 of 2018 was filed before the Additional Sessions Judge, Palghar. After hearing both the parties, the learned Additional Sessions Judge, Palghar by order dated 27th July, 2018 allowed the Application of return of property on furnishing bank guarantee of Rs.48,44,400/- of any nationalized bank before the Judicial Magistrate First Class, Dahanu.

4. The learned counsel for the petitioners has submitted that the petitioners have produced the invoice that the order was placed from Dadra and Nagar Haveli and the liquor was transported to Dadra and Nagar Haveli through the State of Maharashtra, as that is the only way for transportation. He

submitted that the petitioners failed to obtain the Through Transport Pass for which Rs.135/- are required to be paid. Therefore, the truck was stopped and liquor along with truck was forfeited. He submitted that the liquor which is seized is wine and bacardi. The wine is not perishable, however, bacardi is perishable. Therefore, this Application is made. He submitted that the cost to total seized liquor is not Rs.48,44,400/- as calculated but it is Rs.19,15,235/- approximately and he is ready to give indemnity bond of the same amount.

5. Learned APP while opposing this Application submitted that the cost shown by the petitioners is the cost of liquor in Goa but in the State of Maharashtra, the price of this liquor is Rs.48,44,400/-. It was passing through the State of Maharashtra and therefore, rightly the Excise Department has taken timely action and seized the goods. She submitted that the Aurangabad Bench of this Court by order dated 21st December, 2017 in the case of **Jalandhar Mahadeo Jaiswal vs. The State of Maharashtra in Criminal Writ Petition No. 1795 of 2017** has directed that the goods like liquor to be released on furnishing bank guarantee.

6. Heard the submissions. Perused the invoice from Dadra and Nagar Haveli. It appears *prima facie* that there was order from Dadra and Nagar Haveli of this liquor and liquor was transported from Goa to Dadra and Nagar Haveli. The price of the liquor is less in Goa and therefore, there is much difference between the cost of liquor in Maharashtra as calculated by the police and the cost of liquor in Goa as per the invoice. It is not disputed that the petitioners were holding valid licence of sale of liquor and the liquor is also not spurious. There is non-compliance of rule of obtaining TTP.

7. In the case of **Jalandhar Mahadeo Jaiswal** (*supra*), the liquor boxes were supposed to be transported and sold in Madhya Pradesh. The truck was intercepted by State Excise Department's Flying Squad, Dhule at village Hadakhed, Shirpur. The value was shown Rs.34,00,000/- and thus, bank guarantee of Rs.34,00,000/- was directed to be given. The learned Single Judge of Aurangabad Bench has considered the ratio laid down in the case of **Sunderbhai Ambalal Desai vs. State of Gujarat, 2003 ALL MR Cri. 363**. In the case of **Sunderbhai Ambalal Desai**, the Hon'ble Supreme Court has dealt with Section 451 of

Cr. P.C., i.e., Disposal of property pending trial. The Supreme Court has held that if the property is perishable, then the order is to be passed immediately to handover the said property to the proper claimant or to whom the Judge thinks fit. The perishable articles or goods if remain will be damaged. The powers of return of property are discretionary. In view of this, considering the price mentioned in the invoice and considering the nature of the offence, I pass following order:

- (i) Writ Petition is allowed;
- (ii) Instead of bank guarantee of Rs.48,44,400/-, the petitioners shall give one or two sureties of the amount of Rs.19,15,000/- and thereafter the property is to be returned to the petitioners.

8. Parties to act upon the authenticated copy of this order.

(MRIDULA BHATKAR, J.)