IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.388 OF 2018

M/s.Chandrashekhar Exports Pvt. Ltd.
& Ors. ..Applicants
V/s.
State of Maharashtra & Anr. ..Respondents

Mr.Hrishikesh Mundargi for the Applicants.

Mrs.A.S. Pai, APP for the Respondent-State.

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

DATE : 10th APRIL 2019

P.C.

1. The applicant No.1, a Private Limited Company incorporated under the provisions of the Companies Act and the Applicant No.2 and 3 who are responsible for carrying out the day to day affairs of the applicant No.1-Company have approached this Court, praying for quashing of the CR No.144 of 2017 dated 26.02.2017 registered with Bharari Pathak (Raiding Squad), Panvel Excise Department, Panvel.

It is the case of the applicants, that they are engaged in the business of exporting Molasses and these molasses are derived from the waste accumulated in the refining process of sugarcane. It is the case of the applicants that the molasses are transported to the tanker from the sugar factory and the tankers are weighed by the State Excise Inspector and necessary permission is to be obtained from the State Excise Department for transporting the molasses for the purposes of export.

2. A complaint came to be lodged by one, P.G. Dane, Inspector State Excise (Mobile Squad), Panvel alleging that in the year 2012-13 the applicant No.1-Company had purchased 1124.567 MT of Molasses and the same was stored in the registered storage facilities at JNPT Port. The complaint proceeds to state that, during the year 2013-14 the applicant No.1-company purchased 15218.780 MT of Molasses and exported approximately 15738.84 MT of Molasses. It is alleged in the complaint that taking these figures into consideration, the Company ought to have had 604.51 MT of Molasses in storage. However, during a secret visit by the State Excise Department, to ascertain the contents of tank No.139, the remaining Molasses were not found in the same tank. It is also further alleged that during the year 2014-15 the company purchased 43579.74 MT Molasses and exported 43454 MT. The complaint further proceeds to state that, in the year 2015-16 the Company purchased 33625 MT Molasses and exported 33747 MT Molasses

and therefore 620 MT of Molasses should be the balance molasses in tank No.139. However, on a surprise check, it was not traced. On the contrary it was noted that the neighboring tank No.310 was containing 550 MT of Molasses belonging to the applicant No.1-Company. It is thus alleged that the company had illegally sold the Molasses without informing the Excise Department. It was also alleged in the said complaint that the Total Reducing Sugar (TRS) of the said Molasses found in Tank No.310 was about 47.10% as compared to 50% when it was purchased from the sugar factories. The applicants were charged with being involved in adulterating the Molasses by adding water to it and thereby reducing the TRS.

It was also further alleged that, the Constitution of the executive post of the applicant No.1-Company was altered without consent of the District Collector, Raigad and it was alleged that it was done with an intention of committing the alleged offences. With this allegation the provision of Section 65(e), 70, 81, 82 and 83 of the Bombay Prohibition Act were invoked and applied against the applicant No.1-Company and its officials namely applicant Nos.2 and 3. The said FIR came to be lodged on 26.05.2017 and the investigating machinery was sent into motion.

3. The learned counsel Shri.Hrishikesh Mundargi

appearing for the petitioner submits that the lodging of the First Information Report is completely malicious as none of the sections/provisions of the Maharashtra Prohibition Act, 1949 are attracted and there is no criminality in the entire chain of events which is subject matter of the complaint. Shri.Mundargi has invited our attention to the communication placed on record along with application. He submits that the difference between the total quantity of Molasses purchased by the Company in the year 2014-15 and 2015-16 and the total quantity of Molasses exported during the said period and the quantity of Molasses which was remaining for storage was approximately 620 MT. A communication was addressed by the Applicant No.1 to the Commissioner State Excise on 07.10.2016, wherein the details of the Molasses purchased and those exported were set out and it was stated that there was a book stock of about 3.740 MT and approximate 500 MT 'Gain' quantity stock is available due to difference in the Draft vessel survey weight and Terminal Weigh Bridge. Permission was therefore sought, to sale this 'Gain' quantity stock in domestic/international market and it was also stated that the exact quantity can be determined at the time of the clearing of the stock. Further, he also placed reliance on communication dated 04.04.2017, which is a communication issued from M/s.Ganesh Benzoplast Limited who were in charge of the storage terminals at JNPT and it informed to the applicant No.1-Company that an approximate quantity about 600 MT Molasses in tank No.139 is being held by them for a long time and it was requested that the said molasses should be lifted. It was intimated that, the tank No.139 is having minor leaks and this may lead to loss of molasses. It was also intimated that in order to avoid loss of molasses and for repair of the discharge valve, they were undertaking the transfer of the molasses to tank No.310 and for this act, an approval was sought.

Based on this communication, Shri.Mundargi, makes a categorical submission that the applicant themselves have informed the Superintendent of State Excise Department of the existing Molasses to the tune of Rs.620 MT and have also sought permission to sale the stock. This is in confirmity with the provisions of the Bombay Molasses Storage and Supply Regulation, 1959 wherein a duty is cast to inform the State Excise Department of any gain or loss, less than 1% of the total quantity of Molasses purchased and the applicants have discharged the duty. Further, Shri.Mundargi, also invited our attention the order of the District Collector, Raigad, who had examined and investigated into the dispute of 620 MT Molasses and has concluded the issue by his order dated 15.11.2017 where he noted some lapses on the part of the applicant No.1-

company, viz to inform the State Excise Department of transfer of 620 MT Molasses from tank No.139 to tank no.310. However, he did not note any illegality. In light of the aforesaid circumstances, Shri.Mundargi has prayed for quashing and setting aside of the subject CR.

4. We have also heard Ms.Aruna Pai, Additional Public Prosecutor, representing the respondent-authority. She would place reliance on the affidavit filed by the Inspector of State Excise on 03.04.2019 and would invite our attention to various statutory provisions and submit that the closing balance of the Molasses of the applicant No.1 did not tally with the amount which was found in stock. She also submits that the inspection reveals that there were no Molasses stocked in tank No.139 and the same was transferred to tank No.310 illegally, without obtaining the permission of the concerned authority under Rule 27(1) of the Bombay Molasses Rules, 1955. She further submits that the sample of Molasses were collected from tank 310 and came to be forwarded to Western Maharashtra Development Corporation Ltd., Pune, for chemical analysis, where it is found that the total TRS is 47.10% and the Applicant No.1-Company purchased Molasses from various sugar factories with Grade-1 quality which was found to be of 50% TRS

and thus inference was drawn that there is a possibility of mixing water in the Molasses. Further, it is also alleged that the original license book, visit book, stock registers etc., were not produced at the time of the inspection. It is also stated in the affidavit that the Collector, Raigad had imposed fine of Rs.50,000/- on the applicant No.1-Company for breaches committed by it. She further submits that on 15.06.2017 the Inspector of State Excise, Flying Squad, Panvel, submitted an application before the Learned Judicial Magistrate First Class, Uran, District-Raigad praying for grant of permission for auction of seized Molasses and such permission was granted. Against this order the petitioner has preferred a Revision and in the said Revision, the Investigating Officer is restrained from conducting the auction but the said application is withdrawn on 20.02.2018 by the applicant at his own risk. The learned APP would thus submit that the invocation of the provisions of the Maharashtra Prohibition Act against the applicant No.1-Company are perfectly justified and that the breaches are further fortified by the order of the Collector who has imposed fine on the applicant No.1-Company.

5. With the assistance of the learned counsel for the parties we have perused the facts involved in the matter. The

allegation of the respondent is that there was difference in the quantity of Molasses purchased by the applicant and the quantity of Molasses exported, resultantly the Molasses which were left in the storage facility was 620 MT. The record however, reveals that the applicant No.1 has sought permission of the Superintendent of State Excise Department for the sale of excess quantity of Molasses in the Domestic/International Market. Further, the letter dated 04.04.2017 also offers an explanation how the Molasses of about 600 MT was traced in tank No.310 instead of tank No.139. By the said communication, the Liquid Storage Terminal by name Ganesh Benzoplast Limited has informed the applicant no.1 that there is some technical problem with tank No.139 which has minor leaks and this may lead to loss of Molasses and therefore it was proposed to transfer the Molasses to tank No.310. This itself shows that the transfer of Molasses was done by the storage terminal company and that is how the existence of the Molasses in tank No.310 is sought to be explained.

We do not attribute any malicious act on part of the applicant No.1 and this was done in normal course of business. As far as the irregularity and conditions of breach of license is concerned the Collector, Raigad has noted certain irregularities which were recorded as violation of the terms and conditions of the license. However, there is no illegality found in the transaction of the applicant No.1 and for the irregularity, the Collector in the exercise of power conferred on him under Section 104(1) under the Maharashtra Prohibition Act has levied a compounding fee of Rs.50,000/- on the applicant No.1.

6. Perusal of the FIR discloses that the applicants are charged under Sections 65(e), 70, 81, 82 and 83 of the Bombay Prohibition Act. We have carefully perused the relevant provision. The Maharashtra Prohibition Act which is law relating to promotion and enforcement of and carrying into effect a policy of prohibition, imposes a prohibition on any person to import, export, transport, manufacture, bottle, sale by process use or consume an intoxicant or hemp or to tap toddy producing tree, in the manner and to the extent provided by the provisions of the Act or in Rules and Regulations or order made or in accordance with the terms and conditions of a license permit, pass or authorization granted thereunder.

Section 65 of the said enactment prescribe penalty for contravention of the provisions of the Act or any Rules and Regulation or order made or of any license, pass, permit or authorization granted and sub-clause (e) of Section 65 prescribed for (e) of sells or buys or possesses any intoxicant (other than opium) or hemp.

Section 70 deals with penalty for illegal import of Molasses and prescribe that whoever, in contravention of the provisions of this Act, or of any Rule, regulation or order made or of any license or permit granted thereunder, exports, imports, transports, sells or possesses Molasses shall, on conviction be punished with imprisonment for a term which shall not be less than three years or with a fine which shall not be less than Rs.25,000/- and which may extend to Rs.50,000/- or with both.

Section 81 of the said Act provides penalty for attempt or abatement and Section 82 provides the penalty for breach of license, permit etc and bring such a breach within the preview of an offence contemplated under the Maharashtra Prohibition Act.

7. In light of the facts which have been unfolded before us, we conclude that the applicant No.1, has not transported stock of Molasses illegally and the company had sought the permission from the Commissioner of State Excise for sale of the gain quantity for the previous and current year. In such circumstances, we are of the opinion that there is no violation of the Bombay Molasses Rules, 1955, and since the transfer is on account of the fact that tank

No.139 had certain minor leaks, it came to be transmitted by the owner of the storage terminals in tank No.310. In such circumstances, the allegations levelled against the applicants cannot be sustained and the invocation of the provisions of the Maharashtra Prohibition Act, 1949 cannot be sustained. The petitioner has prayed for quashing and setting aside of the subject CR and we are of the considered opinion that continuation of the proceedings against the petitioner would amount to travesty of justice as we have recorded that the invocation of the provisions of the Maharashtra Prohibition Act against the applicants cannot be sustained and it would amount to an abuse of the process of the Court. In exercise of the inherent jurisdiction vested in us and to secure the ends of justice, we, therefore, quash and set aside the CR No.144 of 2017 dated 26.05.2017 registered with the State Excise Officer, Bharari Pathak (Raiding Squad), Panvel, for the offences punishable under Sections 65(e), 70, 81, 82 and 83 of the Bombay Prohibition Act.

The Criminal Application is made absolute in terms of prayer clause (a).

(SMT.BHARATI H. DANGRE, J.) **(RANJIT MORE, J.)**