IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION NO. 10189 of 2012
With
R/CRIMINAL MISC.APPLICATION NO. 12892 of 2012
With
R/CRIMINAL MISC.APPLICATION NO. 12893 of 2012
With
R/CRIMINAL MISC.APPLICATION NO. 12894 of 2012
With
R/CRIMINAL MISC.APPLICATION NO. 17209 of 2012
With
R/CRIMINAL MISC.APPLICATION NO. 17211 of 2012

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE R.P.DHOLARIA

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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NILESHBHAI HARISHBHAI MODI
Versus
STATE OF GUJARAT & 1 other(s)

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Appearance:
MR ASHISH M DAGLI(2203) for the Applicant(s) No. 1
NOTICE SERVED(4) for the Respondent(s) No. 2
MR RONAK RAVAL APP (2) for the Respondent(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE R.P.DHOLARIA**

Date : 07/02/2020

COMMON ORAL JUDGMENT

All these petitions are filed for quashing of the FIRs being (i) F.I.R No. III-901/2011 for

offences punishable under Sections 70(A), 81 & 84 of the Prohibition Act registered with Kadodara GIDC Police Station, Surat (ii) F.I.R No. III-298/2012 for offences punishable under Sections 66(1)B, 65B, B, C, D, E of the Prohibition Act registered with Kadodara GIDC Police Station, Surat (iii) F.I.R No. III-281/2012 for offences punishable under Sections 66F and 81 the Prohibition Act with Kadodara GIDC Police Station, Surat (iv) F.I.R No. III-240/2012 for offences punishable under Sections 66F and 81 the Prohibition Act with Kadodara GIDC Police Station, Surat (v) F.I.R No. III-774/2012 for offences punishable under Sections 70A, 81 and 83 of the Prohibition Act registered with Mahuva Police Station, Surat and (vi) F.I.R No. III-774/2012 for offences punishable under Sections 70(A), 81 and 83 of the Prohibition Act registered with Mahuva Police Station, Surat. It is the case of the applicants in the respective F.I.Rs that on the basis of the statement of the co-accused and recovery of stock of some jaggery, they have been sought to be prosecuted under the F.I.Rs under challenge.

2. Mr. Ashish Dagli, learned advocate for the applicants, during the course of arguments, has relied on the orders passed by this Court in Criminal Misc. Applications Nos. 13918 of 2012 and 13588 of 2011. There the Court, while disposing of the applications had stated as under:-

> “5. From the reading of the provision of Section 70A of the Bombay Prohibition Act, 1949,

it is clear that possession of rotten gur is prohibited. The Act provides penalty for illegal possession of rotten gur and Section 81 of the Act provides for penalty for attempts or abetment, which are the offences under the Act. Even after the investigation is completed in the offence in question, nothing further has come out against the petitioner. As fairly submitted by the learned Public Prosecutor, except the statement made by the co-accused, viz. accused no.1, there is no other allegation that the petitioner-accused no.2 had delivered rotten gur to accused no.1. ***In the absence of any further material or any other evidence on record to connect the petitioner to the offence of possession of rotten gur, this Court is of the view that if any proceedings are allowed to go on further, the same will be the abuse of process of law. Except the statement of the co-accused, that is, accused no.1, nothing has come out against the present petitioner even after the investigation is completed.***

6. In view of such factual scenario, this Court is of the view that this is a fit case to invoke Section 482 of the Code of Criminal Procedure for quashing the First Information Report so far as the present petitioner, accused no.2 of the offence in question, is concerned.

3. Mr. Ronak Raval, learned Additional Public Prosecutor, has submitted that the applicants are involved in other similar such offences and has requested not to quash the FIRs lodged against the applicants.

4. Having heard learned advocates for the respective parties and on going through the factual scenario, this Court is of the opinion that the entire case is based on statement of co-accused. Only evidence to link the applicants with the offence is

recovery of some jaggery from them and nothing more. Be that as it may, since except the statement of co-accused, no other direct evidence is available against the present applicants, no useful purpose would be served in prosecuting the applicants in connection with the above FIRs.

5. Hence, these Criminal Misc. Applications are allowed. The FIRs being (i) F.I.R No. III-901/2011 for offences punishable under Sections 70(A), 81 & 84 of the Prohibition Act registered with Kadodara GIDC Police Station, Surat (ii) F.I.R No. III-298/2012 for offences punishable under Sections 66(1)B, 65B, C, D, E of the Prohibition Act registered with Kadodara GIDC Police Station, Surat (iii) F.I.R No. III-281/2012 for offences punishable under Sections 66F and 81 the Prohibition Act with Kadodara GIDC Police Station, Surat (iv) F.I.R No. III-240/2012 for offences punishable under Sections 66F and 81 the Prohibition Act with Kadodara GIDC Police Station, Surat (v) F.I.R No. III-774/2012 for offences punishable under Sections 70A, 81 and 83 of the Prohibition Act registered with Mahuva Police Station, Surat and (vi) F.I.R No. III-774/2012 for offences punishable under Sections 70(A), 81 and 83 of the Prohibition Act registered with Mahuva Police Station, Surat are hereby quashed and set aside. Rule is made absolute to the above extent in each petition.

(R.P.DHOLARIA, J)

chandrashekhar