

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Criminal Application (APL) NO. 756/2018

Mr. Amit S/o. Fulsing Baghel
Age 50 Years, Occupation Labour,
R/o. Nagepalli, Taluka Aheri,
Dist. Gadchiroli.

..... Applicant

// VERSUS //

State of Maharashtra,
Through its Police Station Officer,
Police Station Aheri,
Dist. Gadchiroli.

.... Non-applicant

Shri Aniruddh Ananthakrishnan h/f. Shri R.R. Vyas, Advocates for the
applicant
Shri S.M. Ghodeswar, APP for the non-applicant/State

**CORAM : V. M. DESHPANDE and
ANIL S. KILOR, JJ.**

DATED : 11/12/2020

ORAL JUDGMENT : (PER:- V. M. DESHPANDE, J.)

1] Heard. **Rule.** Rule made returnable forthwith.

2] Heard finally by consent of the parties.

3] The applicant is represented by learned Counsel Shri Aniruddh Ananthakrishnan holding for Shri R.R. Vyas, learned Counsel for the applicant and the non-applicant/State is represented by Shri S.M. Ghodeswar, learned Additional Public Prosecutor and also perused the

reply filed on behalf of the prosecution.

4] The present application is moved by the applicant for quashing of First Information Report (for short the “FIR”) No. 122/2018 registered with Police Station, Aheri, District Gadchiroli together with Final Report No. 85/2018 filed in the Court of Judicial Magistrate First Class, Aheri, District Gadchiroli for the offences under Sections 65(e) and 83 of the Maharashtra Prohibition Act, 1949 (for short the “Act of 1949”).

5] The prosecution case as it could be seen from the FIR and reply that in the Police Station, secret information was received that one Mahesh Rajnalwar resident of Alapalli stocks country liquor as well as foreign liquor and he sells the same from his house. In view of the said, first informant – Raju Bondayalu Mancharlawar, Police Constable alongwith other police personnel took panchas with them and reached to the house of Mahesh Rajnalwar and gave call to him. The said accused person came outside his house and with his permission, when his house was searched, in the kitchen sealed bottles of Imperial Blue-foreign liquor worth Rs.4,000/- were found and these were seized in presence of Panchans. At that time, it was disclosed to the raiding party by the said Mahesh that said liquor is supplied to him by the present applicant.

6] It is a cardinal principle of law that the statement of co-accused is inadmissible, though at very initial stage of the investigation, it may give lead to the Investigating Officer. In this case, investigation is over. The charge-sheet is already filed. The charge-sheet does not reveal any independent evidence or material against the present applicant that he sold or supplied the liquor to Mahesh. Therefore, except statement of co-accused, there is no material against the present applicant.

7] In the reply, filed by non-applicant/State, it is stated that one crime i.e. Crime No. 46/2018 is pending against the present applicant for the offence under Section 65(e) of the Bombay Prohibition Act.

8] Section 65(e) of Maharashtra Prohibition Act, 1949 is as under:

“65.
(e) *sells or buys or possesses any intoxicant other than opium or hemp, or*
.....”

Plain reading of the Section would show that a person will be responsible for the offence, if he possesses, sells or purchases the liquor.

9] In the present case, it is not the case of prosecution that the applicant was possessing the contraband, nor it is the case of the

prosecution that he has purchased the contraband. We have already seen the prosecution case that there is no independent evidence that the applicant has sold or supplied the contraband to the applicant. If, that is so, merely because the applicant is having one case at his discredit that is not sufficient for the prosecution to array the applicant as co-accused. In that view of the matter, we pass the following order:

- i) The application is allowed.
- ii) First Information Report No. 122/2018 registered with Police Station, Aheri, District Gadchiroli for the offences under Sections 65(e) and 83 of the Maharashtra Probation Act, 1949 together with Final Report No. 85/2018 for the said offences filed in the Court of Judicial Magistrate First Class, Aheri, District Gadchiroli is hereby quashed and set aside qua the present applicant only.

10] Rule is made absolute in the above terms.

JUDGE

JUDGE