

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.1432 OF 2020

M/s. Satbhai Wines Kopargaon
through
Sanjay Vasantao Satbhai
Age : 68 years, Occup : Business
R/o Kopargaon, Dist. Ahmednagar

... Petitioner

VERSUS

1. The State of Maharashtra,
2. The Police Inspector,
State Excise Department
Flying Squad – 2, Shrirampur
Dist. Ahmednagar

... Respondent

WITH

CRIMINAL WRIT PETITION NO.1433 OF 2020

M/s. Satbhai Traders Kopargaon
through
Vikramaditya Sanjay Satbhai
Age : 31 years, Occup : Business
R/o Kopargaon, Dist. Ahmednagar

... Petitioner

VERSUS

1. The State of Maharashtra,
2. The Police Inspector,
State Excise Department
Flying Squad – 2, Shrirampur
Dist. Ahmednagar

... Respondent

...

Advocate for Petitioner : Mrs. Usha P. Kale h/f. Mr. Pramod D. Kale
APP for Respondent/State : Mrs. R.P. Gaur

...

CORAM : MANGESH S. PATIL, J.

Reserved on 25.02.2021

Pronounced on : 01.03.2021

JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. The learned APP waives service of notice for respondent State. With the consent of both the sides, the matter is heard finally at the stage of admission.

2. The petitioners are before this Court being aggrieved and dissatisfied by the orders passed by the two courts below refusing to return the liquor seized in Crime No.214/2019 by the Squad of Maharashtra State Excise Department on the basis of which offence is registered under Sections 65 (a)(e), 80 (1), 83, 98(2), 66 of the Maharashtra Prohibition Act, 1949.

3. A vehicle was intercepted in which liquor was found. It was also found stored in a godown. It was suspected that it was a spurious liquor and the prosecution was initiated.

4. The learned advocate for the petitioners submits that the petitioners are valid licence holders and have been using the very same godown for stocking liquor. Even the vehicle that was intercepted and in which same liquor was being transported belong to them. Since they were possessing valid permits, are entitled to claim the vehicle as well as liquor seized in the matter.

5. She would further submit that the Magistrate has returned the vehicle to them but refused to return the liquor. Even the learned Additional Sessions Judge in revision has taken the same stand.

6. She would submit that copies of the licences issued by the District Collector clearly refer to licences being held by the petitioners which have been renewed from time to time till date. They have both the licences CL-III as well as FL-II since 1992-93. The godown from where the liquor is seized is also duly recorded in one such permit as a place of storage. In spite of such state of affairs, both the courts below have erroneously refused to return the liquor.

7. She also produces on record a latest certificate issued by the Chief Officer of the Kopergaon Municipal Council dated 20.01.2021 mentioning that the petitioner - Sanjay Vasantrao Satbhai (in Crl. WP/1432/2020) is the owner of the concerned godown standing in City Survey No.1543 (B) 105 which number has subsequently changed to 1543/403/01 and 1543/403/02. It further reads that it stands recorded in his name since the year 1991. She would therefore submit that the petitioners being legally entitled to claim the liquor, it ought to be returned to them.

8. The learned APP strongly opposes the petitions. She submits that the two courts below have rightly refused to returned liquor to the petitioners. The liquor was found stored at an unauthorized place. The investigation was going on and in the fact situation of the matter the two courts below were justified in refusing to return liquor.

9. Without indulging into any longer discussion it would be appropriate to observe that in view of the latest certificate issued by the Chief Officer of the Kopergaon Municipal Council, the petitioner - Sanjay Vasantrao Satbhai appears to be the owner in possession of the godown of which the numbers changed during the course of time. It also reads that he has been using that godown for storing liquor and as his FL-II licence also reads that it is the godown wherein he is permitted to store liquor. Such endorsement is appearing since 1995.

10. Admittedly, the vehicle in which some quantity of liquor was being transported has been directed to be returned. As of now the petitioners have not been arrayed as accused. The CA report placed on record by the learned APP as a part of the papers of investigation show, that there was nothing spurious.

11. It is also pertinent to note that in the meanwhile the Collector had also issued notice to the petitioners calling upon them to show cause as

to why their respective licence may not be suspended/cancelled. By the orders dated 26.06.2020 the learned Collector has disposed of the notice by directing composition, on petitioners depositing an amount of Rs.50,000/- each. Meaning thereby that even the Collector does not now dispute their right and title over the seized liquor.

12. In view of such state of affairs, the petitions deserve to be allowed.

13. The petitions are allowed. The impugned judgments and orders are quashed and set aside. The Criminal Miscellaneous Application No.192/2020 and Criminal Miscellaneous Application No.193/2020 stand allowed. The liquor shall be returned to the respective petitioners subject to the conditions to be imposed by the Magistrate. He shall now put whatever conditions as deemed fit in the facts and circumstances. The Rule is accordingly made absolute in both the petitions.

(MANGESH S. PATIL, J.)