

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APL) NO.56 OF 2021

APPLICANT :- Chandrashekhar S/o. Jagannath Shukla,
Aged about 40 years, Occ. Pvt. Service,
R/o. Seminari Hills, Nagpur,
Tq. & Distt. Nagpur.

...VERSUS...

NON-APPLICANTS :-

1. The State of Maharashtra,
Through the Police Station Officer,
Police Station Bajaj Nagar,
Nagpur City, Nagpur
2. Dharmadas Sawarkar,
Police Sub-Inspector, Unit No.1,
Crime Branch, Nagpur City,
Bajaj Nagar, Nagpur.

Shri. P R. Agrawal, Advocate for applicant
Shri D. P. Thakare, APP for Non-applicant No.1-State

CORAM : A. S. CHANDURKAR AND G. A. SANAP, JJ.

DATED : 15.07.2021

O R A L J U D G M E N T (Per : G. A. Sanap, J.)

Rule. Rule made returnable forthwith.

2] In this criminal application, made under Section 482
of the Code of Criminal Procedure, the applicant has prayed for

quashing of FIR bearing No. 251 of 2020 dated 25/12/2020 registered against him at Bajaj Nagar Police Station, Nagpur City Nagpur, for the offence punishable under Section 65 (e) of the Maharashtra Prohibition Act, 1949 (hereinafter referred to as 'the Prohibition Act'),

3] The facts leading to filling of this application are as follows:

It is the case of the prosecution that on 24/12/2020, PSI Shri Dharmadas Sawarkar, who is non-applicant No. 2, alongwith the staff was doing patrolling duty. They received the information from the informant that one person possessing the liquor, would be coming at the spot. Accordingly, they laid the trap at Kachipura Chowk. They spotted the person of the description given by the informant with the scooter. They stopped him and made inquiry with him about his name etc. They gave him their introduction. They inspected the bag carried by the accused. In the said bag they found the foreign liquor mentioned in the FIR.

It is the further case of the prosecution that the total quantity of the foreign liquor possessed by the applicant was 15 units. It was without permit & licence and as such an offence under Section 65(e) of the Prohibition Act is made out. The non-applicant No.2 in presence of two panchas seized the liquor bottles and the vehicle. On the basis of the report lodged by the non-

applicant No.2, the above crime has been registered against the applicant.

4] In this application, it is the case of the applicant that he has not committed any offence punishable under Section 65 (e) of the Prohibition Act. The false case has been filed against him. He has admitted that he was possessing liquor bottles mentioned in the FIR however, according to him he was holding the permit for possessing the liquor and for delivering the same to the customer on behalf of the owner of the Sangam Wine Shop. According to him, as per the provisions of law and the rules made from time to time the liquor possessed by him was not more than 12 units. It is his case that, therefore, no offence has been made out against him. On these averments, he has prayed for quashing of the FIR.

5] The non-applicants have filed their reply. They have reiterated the facts stated in the FIR. According to the non-applicants, the applicant was possessing and transporting the liquor beyond the permissible limit without licence. The liquor found in the possession of the applicant was 15 units. The possession and transportation of the liquor beyond certain limits was not permissible as per the Bombay Foreign Liquor Rules, 1953. It is the case of the non-applicants that act committed by the applicant would constitute an offence punishable under Section 65 (e) of the Prohibition Act.

6] We have heard the learned Advocate for the applicant and the learned Additional Public Prosecutor for the non-applicants. Perused the record and proceedings.

7] Shri. P. R. Agrawal, learned Advocate for the applicant submitted that on the basis of the facts stated in the FIR it is crystal clear that, the liquor possessed and being transported for delivery to the customer was 11500 ml. The learned Advocate further submitted that the value of 1 unit is 1000 ml. The learned Advocate further submitted that, therefore, the liquor possessed and being transported by the applicant was within the permissible limits. The learned Advocate further submitted that the applicant is possessing the permit of 'liquor delivery boy' issued by the Inspector of State Excise, Division Nagpur. The learned Advocate further submitted that the applicant is possessing the permanent permit issued under Rule 70-D of the Bombay Foreign Liquor Rules, 1953, which authorized him to purchase, possess, transport, use and consume foreign liquor and country liquor. The learned Advocate further submitted that as per the various orders and resolutions passed by the Government of Maharashtra, the liquor possessed and being transported by the applicant was within the permissible limits and therefore, the same would not constitute the offence under Section 65 (e) of the Prohibition Act. The learned Advocate, therefore, submitted that the FIR registered on the basis of above stated admitted facts needs to be quashed and set aside.

8] Shri. D. P. Thakare, learned Additional Public Prosecutor submitted that the material collected during the course of investigation disclosed the commission of the crime by the applicant under Section 65 (e) of the Prohibition Act. The learned APP further submitted that on the basis of the concrete material and evidence collected during the course of investigation, the prayer made by the applicant cannot be granted.

9] We have given our thoughtful consideration to the submissions made and the record relied upon by the applicant and the non-applicant in support of their respective contentions. In order to appreciate the submissions advanced on behalf of the applicant, it would be necessary to peruse the documents relied upon by the applicant. At the outset, it is necessary to state that there is no dispute on the part of the non-applicants that as per the rule and the Government of Maharashtra resolution, the permission for possession and transportation of 12 units liquor has been granted. The question is whether the foreign liquor found in the possession of the applicant was within permissible limits and whether he hold the permit and licence to possess and transport the same.

10] The Annexure 'A' is the order of the District Collector, Nagpur dated 02/09/2020. As per this order, the Collector allowed the home delivery of the liquor during COVID-19 Pandemic period. The description of the liquor permitted for

delivery has been mentioned in the order. The foreign liquor recovered from the applicant is fully covered under this order of the Collector. Annexure 'B' is the identity card of 'liquor delivery boy' issued in favour of the applicant by Inspector of State Excise, Division Nagpur. As per this licence, he was permitted to work as 'liquor delivery boy' with Arvind Omkantlal Chourasia holder of FL-II-56 licence. Annexure 'C' is the permanent permit issued in favour of the applicant for possession, purchase and consumption of the liquor. It is dated 03/03/2020. Annexure 'D' is the order issued in the name of the Governor of Maharashtra dated 19/09/2019 by the Joint Secretary to the Government of Maharashtra, Home Department. As per this order, the limit for the possession of the quantity of the liquor mentioned in column No. 3 was declared. It is seen that the foreign liquor recovered from the possession of the applicant would be covered under Sr. No. 2 of this order. As per this order, the prescribed limit/quantity is 12 units.

11] It is equally important to see the documents placed on record by the non-applicant No.2 himself. The Perusal of these documents would show that the non-applicant No.2 had made queries to the Inspector of State Excise, Division Nagpur on three vital points. The Excise Inspector answered these queries by letter dated 20/01/2021. The query No.3 answered by the Inspector of State Excise would show that during the lock-down

period, the delivery boy was permitted to carry 24 units of liquor at a time.

12] The aforesaid documentary evidence would show that the applicant was having the 'delivery boy licence'. He had also permanent permit for possession of the liquor. As per the order of the Collector, Nagpur during the COVID-19 Pandemic period home delivery of the liquor was permissible. As per the order dated 19/09/2019 issued by the Home Department, Government of Maharashtra, the 12 units limit for possessing the liquor was issued by the Government. It is therefore seen that the contravention of the rules would occur if the liquor possessed is beyond the limit declared by the Government. In this case, admittedly the foreign liquor possessed by the applicant was 11500 ml. We have already stated that the value of one unit is 1000 ml. The foreign liquor possessed by the applicant was therefore, within the permissible limits. Section 65 (e) of the Prohibition Act can be attracted if there is contravention of the provisions of the Prohibition Act or any rule, regulation or order made or any licence, permit or authorization granted under it. In our opinion, on the basis of the documentary evidence discussed aforesaid would show that the prosecution has failed to make out the fundamental ingredients of Section 65(e) of the Prohibition Act. It has been stated in the FIR that 15 units foreign liquor was found in possession and being transported by the applicant. Minute perusal of the FIR would show that this statement is self-

contradictory. In the FIR, the detailed description of the foreign liquor with quantity has been mentioned. The quantity of the liquor possessed by the applicant was 11500 ml. Therefore, in our opinion, the offence under Section 65 (e) has not been made out. The continuation of the prosecution in this background would be abuse of the process of law and therefore, to meet the ends of justice, the prosecution initiated against the applicant needs to be quashed. Accordingly, we accept the submissions advanced by the learned Advocate for the applicant. Hence, the following order.

ORDER

- i] The criminal application is allowed.
- ii] The FIR bearing Crime No. 251 of 2020, dated 25/12/2020, registered with Bajaj Nagar Police station Nagpur, for the offence punishable under Section 65(e) of the Maharashtra Prohibition Act, 1949 is quashed and set aside.

Accordingly, the criminal application is disposed of.

JUDGE

JUDGE