

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

Criminal Application (APL) No.554/2020

Prakash Rajkumar Tanwani,
Aged about 46 years, Occ.-Business,
R/o.-Plot No.197, infront of hotel Satya Surya Nagar
Pardi, Nagpur .

... Applicant.

-Versus-

State of Maharashtra,
through State Excise Inspector Nagpur
having its office at Civil Lines, Nagpur.

... Respondent.

Mr. D.V. Chauhan, Advocate for applicant.

Mr. S.M. Ghodeswar, APP for State.

CORAM : M.S. SONAK & PUSHPA V. GANEDIWALA, JJ.

DATE : 27-10-2021.

Oral Judgment (P.C)

Admit. Heard finally with consent of Mr. D.V. Chauhan, learned
Counsel for the applicant and Mr. Ghodeswar, learned APP for the State.

2. This is an application under Section 482 of the Code of Criminal Procedure seeking quashment of the First Information Report dated 27-02-2020 registered by the State Excise Inspector, Nagpur vide Crime No.65/2020 for the offences punishable under Sections 65 (a)(e), 81 and 83 of the Maharashtra Prohibition Act, 1949, against the applicant.

3. Learned Counsel Mr. Chauhan appearing for the applicant submits that a perusal of the FIR does not disclose the commission of any cognizable offence against the present applicant. The present applicant is the wholesaler of country liquor within the jurisdiction of the respondent. He received order for supply of country liquor from the retailer Shri S.R. Jaiswal Wine Shop situated at Yavatmal. After receiving order, the applicant as per the Maharashtra Country Liquor Rule 31(3) duly obtained transport pass on 27-02-2020 and accordingly supplied the liquor. It is alleged that the present applicant has consented to supply liquor to the accused No. 1 in breach of terms of the license. It is submitted that there is no material to connect the applicant in the present crime. The learned counsel read out the bare texts of the alleged offences levelled against the applicant and submitted that the alleged act of the applicant do not fulfill the ingredients required for the commission of the alleged offences. Learned Counsel urged to quash and set aside the FIR against the present applicant.

4. Learned APP Mr. Ghodeswar appearing for the State, filed affidavit in reply on behalf of the State and submits that the applicant has repeatedly sold the country liquor to the accused no.1. In paragraph 10 of the affidavit it is stated that during search of the premises of the applicant nothing incriminating could be found. The batch number of the stock of country liquor which is seized, matches with the Excise Register of the

present applicant.

5. Learned APP submits that during the course of investigation the present applicant has shown his willingness to supply the stock to the accused no.1 after the prescribed permitted time duration for selling liquor and he consented to supply 40 boxes of country liquor to accused no.1 at 9.30 p.m. on the same day and the said aspect amounts to breach of license condition. It is further stated that suspecting the action on the part of Excise Officer the applicant thereafter refused to supply the county liquor at 9.30 p.m. Learned APP submits that material collected during investigation indicates clear involvement of the applicant in the aforesaid crime.

6. We have considered the rival submissions. At the outset, admittedly, the present applicant is the wholesaler of country liquor within the jurisdiction of the respondent. It is also not disputed that the applicant received an order for supply of country liquor from the retailer Shri S.R. Jaiswal Wine Shop situated at Yavatmal and the applicant, as per the Maharashtra Country Liquor Rule 31(3), duly obtained transport pass on 27-02-2020 and accordingly supplied the liquor.

7. During investigation it is revealed that the stock of the liquor which was seized from the accused persons was sold by the present applicant on 27-02-2020. The said stock of the liquor was supposed to be carried to

Yavatmal. However, instead of carrying the said stock for distribution at Yavatmal, the said stock was sold to the other accused i.e accused nos. 2 to 5 by accused no.1. As the present applicant consented to supply further 40 boxes of country liquor to accused no.1 beyond permitted time duration on the same day, he has been roped in the present crime. The alleged act itself does not constitute commission of any substantive offence defined and punishable under Section 65 of the Act. Furthermore, Section 81 and 83 of the Act deals with the aspect of abetment and conspiracy to commit an offence. In our considered opinion, the consent to supply country liquor beyond permitted time duration and thereafter withdrawing the said consent, neither be termed as abetment nor as conspiracy. For conspiracy, the first and foremost requirement is the presence of an agreement between two or more persons for commission of an illegal act.

8. The learned APP fairly concedes in the affidavit in reply that during search of the premises of the applicant nothing incriminating is found. Given the aforesaid facts, we find that the present case is the fit case to quash and set aside the First Information Report dated 27-02-2020 registered by the State Excise Inspector, Nagpur vide Crime No.65/2020 for the offences punishable under Sections 65 (a)(e), 81 and 83 of the Maharashtra Prohibition Act, 1949, against the applicant only.

9. For the reasons aforesaid, we allow the application and pass the following order :

- (i) The Criminal Application (APL) No.554/2020 is allowed.
- (ii) The First Information Report No. 65/2020 dated 27-02-2020 registered by the State Excise Inspector, Nagpur vide Crime No.65/2020 for the offences punishable under Sections 65 (a)(e), 81 and 83 of the Maharashtra Prohibition Act, 1949 against the applicant is quashed and set aside.
- (iii) Pending application(s), if any, stand(s) disposed of.

(Pushpa V. Ganediwala, J.)

(M.S. Sonak, J.)