

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

CRIMINAL APPLICATION [APL] NO. 1171 OF 2018

- 1] Pooja Musafir Kanojia
Aged about 25 years, Occu-Private
R/o Near Anjekar Showroom,
Datta Nagar, Chandrapur

.... **APPLICANT**

// VERSUS //

- 1] State of Maharashtra
Through Police Station, Ramnagar,
Chandrapur.
- 2] Vilas Suryabhan Balki,
R/o Police Station, Ramnagar,
Chandrapur.

.... **NON-APPLICANTS**

Shri M.N. Ali, Advocate for the applicant,
Shri S.M. Ghodeswar, learned A.P.P. for the Non-applicant No.1/State

CORAM : V.M. DESHPANDE & ANIL S. KILOR, JJ.
DATED : JANUARY 05, 2021

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

1. **RULE.** Rule is made returnable forthwith. Heard finally by consent of the learned counsel for the parties.

2. The applicant, who is a lady, is represented by Shri M.N. Ali, learned counsel whereas the non-applicant no.1/State is represented by Shri S.M. Ghodeswar, learned Additional Public Prosecutor.

3. The present application under Section 482 of the Code of Criminal Procedure is filed seeking quashment of First Information Report which is placed on record at Annexure-I of this proceeding. The crime was registered on 27/02/2018 in view of the complaint lodged by non-applicant no.2 with Police Station Ramnagar, Chandrapur for the offence punishable under Section 65(E) of the Maharashtra Prohibition Act, 1949 and under Section 188 of the Indian Penal Code. The offence was registered against the driver of Bolero Pick-up vehicle having registration No. MH-34/BG-1062.

4. As per the First Information Report, non-applicant no.2 when was patrolling along with other staff, as also was discharging the duty to raid illegal gambling den and illegal sell of country liquor, got secret information that one Mahindra Bolero vehicle bearing No.MH-34/BG-1062 is transporting liquor illegally and the contraband is likely to be emptied at Pugalia Nagar, Civil Lines, Chandrapur. Consequent to

such secret information, non-applicant no.2 along with panch witnesses went near the spot and at that time, the raiding party witnessed a Bolero vehicle coming on the spot. The same was intercepted. At that time, the driver of the said vehicle ran away from the spot by leaving behind the vehicle. On search, 1100 bottles of country liquor were found. Also the raiding party noticed a hidden place to the trolley and from the said, 44 boxes of liquor were also found.

5. After registration of crime, the investigation started. During the investigation, the Investigating Officer found that the vehicle, which was seized from the spot, is registered in the name of the present applicant.

6. The State has filed reply opposing this application. In the reply, it is stated that during the course of investigation, it was found that an agreement was executed by the applicant with one Ankush Wankhede, who is one of the accused in the crime, on 23/01/2018 and under the said agreement, the vehicle was handed over by the applicant to said Ankush Wankhede. The learned Additional Public Prosecutor who is having all investigation papers, handed over the same for perusal of the Court and the investigation papers also contain

the agreement executed between the applicant and Ankush Wankhede. Perusal of the said agreement would show that it was executed on 23/01/2018 and under the said agreement, for a period of three months, the vehicle was given to Ankush Wankhede by the applicant and the custody and possession of the vehicle was given to Ankush Wankhede. It was also one of the covenants of the agreement that he will not use the vehicle, which is given in his custody, for any illegal purpose.

7. The applicant, who is the owner of the vehicle, had executed an agreement giving the vehicle in possession of Ankush Wankhede and for that, as per the agreement, she was to receive the charges. As soon as the vehicle was handed over to Ankush Wankhede by the applicant, it could not be said that the applicant was having any control of whatsoever nature over the said vehicle. If a person, in whose favour an agreement is executed and possession of the vehicle is given, is using the same for transporting the contraband, in our view, the applicant cannot be held responsible. Further, it is not the case of the prosecution, as it could be seen from the investigation papers, that it is the applicant who has directed the driver to carry the contraband.

It is not the case of the prosecution that the applicant is also having any past criminal record.

8. In view of the aforesaid, deception of the prosecution case qua the present applicant, we are of the view that the First Information Report in which the applicant is made as an accused, is required to be quashed. Consequently, we pass the following order:

ORDER

- i) The Criminal Application is allowed.
- ii) First Information Report No. 174/2018 registered with Police Station, Ramnagar, Chandrapur for an offence punishable under Section 65-E of the Maharashtra Prohibition Act, 1949 and under Section 188 of the Indian Penal Code, is hereby quashed qua the present applicant only.
- iii) Rule is made absolute in above terms.

JUDGE

JUDGE

Diwale

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by Parag
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**Parag
Diwale**