

AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.699 of 2022

Sidhartha Sankar

.... ***Petitioner***
Mr. B.P. Das, Advocate

-versus-

State of Odisha

.... ***Opp. Party***
Mr. R.K. Mishra, AGA

**CORAM:
JUSTICE CHITTARANJAN DASH**

DATE OF JUDGMENT : 23.09.2022

1. Heard learned counsel for the Petitioner and the State.
2. By means of this petition, the Petitioner seeks to set aside the order dated 5th March, 2022 passed by the learned 3rd Additional Sessions Judge, Balasore in Criminal Revision No.2/5 of 2022 arising out of Misc. Case No.113 of 2021 of the GN-cum-JMFC, Bhogarai.
3. The fact leading to the filing of this petition are that on 9th October, 2021 at about 12.30 AM having received a reliable information, the OIC, Excise, Bhogarai Excise Station along with the staff who were on patrolling duty detained the vehicle bearing registration No.OD-01-D-6133 on the road leading from Mayurbhanj to Bhograi . On search 829.080 litres of duplicate IMFL was detected. The same was seized as contraband article and case was registered against the driver and two helpers present in a white colour TATA AC Gold vehicle. The final PR was submitted by the OIC, Excise under Section 52(a)/55/59(d)/62 of the Odisha Excise Act, 2008. 30 samples were drawn from the

seized liquor for chemical examination sent to the Asst. Chemical Examiner. The report of the chemical examination in respect to the 30 samples sent for examination found with alcohol that contained suspended particles. All the 30 samples were accordingly declared unfit for human consumption. On the basis of the written report of the OIC, Excise, Bhogarai Excise Station corresponds to the PR No.65/2021-2022, 2(a) CC No.225 of 2021 was registered for commission of offences as above said. The Petitioner claims herself as the Power of Attorney Holder of the original licensee, Chandrakanti Rout. According to her, the said Chandrakanti Rout being a lottery winner has been running IMFL OFF shop at Thana Chhak in the district of Balasore for the excise year 2021-2022 with effect from 1st May, 2021. As per the conditions of the licence, the licensee is required to lift the monthly fixed MGQ of IMFL 2520 LPL and Beer 3780 BL. In compliance with the condition of the licence, the licensee lifted the IMFL and Beer in respect of the month of October, 2021 on 9th October, 2021 upon deposit of the costs, excise duty and other fees on 8th October, 2021. The Depot Manager, OSBC, Balasore permitted lifting of the MGQ of IMFL and Beer on 9th October, 2021 as per demand of the licensee. The said lifted MGQ i.e. IMFL and Beer was loaded in registered vehicle bearing No.OD-01-D-6133 which having proceeded towards the shop, detained by the OIC, Bhogarai Excise Station near Thana Chhak, and the entire liquor under transportation was taken to custody and the case was registered against the licensee and her authorized salesman. The arrested driver and the authorized salesman were enlarged on bail by the learned Additional Sessions Judge, Balasore in BA No.96 of 2021 vide order dated 11th October,

2021. The present Petitioner being the Power of Attorney Holder of the original licensee filed an application under Section 457 Cr.P.C. before the learned GN-cum-JMFC, Bhograi in Misc. Case No.113 of 2021 for release of the seized IMFL along with related documents which was turned down by the said court. The Petitioner filed a revision before the learned Sessions Judge as was dealt with by the learned 3rd Additional Sessions Judge, Balasore in Criminal Revision No.02/05 of 2022 who confirmed the order of the learned GN-cum-JMFC, Bhograi passed in Misc. Case No.113 of 2021 and dismissed the Revision and hence, the present application seeking to set aside the impugned order dated 5th March, 2022 passed in the above referred revision.

4. Learned counsel for the Petitioner, *inter alia*, relied upon a decision of the Apex Court in the case of ***Sundar Bhai Ambala Desai vrs. State of Gujarat reported in AIR 2003 SC 638*** besides the order dated 16th April, 2019 passed in CRLMC No.54 of 2018 by a Coordinate bench of this Court. It is contended by the learned counsel that the Petitioner being a licensee is required to lift the fixed monthly MGQ and accordingly having deposited the costs and other statutory fees for lifting 68 cases of IMFL and 33 cases of Beer got the materials loaded in the approved vehicle and was proceeding towards the site shop which was illegally detained and the stock was seized with an ulterior motive and a false case has been foisted by hatching the spurious liquor and beers seized in connection with other case. According to the learned counsel the imputations leveled against the Petitioner is completely illegal and not sustainable in the eye of law being a licensee engaged in the business as per the conditions of the licence and thus, the order dated 5th March, 2022 passed in

Criminal Revision No.02/05 of 2022 by the learned 3rd Additional Sessions Judge is liable to be quashed and set aside and the seized liquor be released in consonance with the ratio of the decision in the matter of ***Sundar Bhai Ambala Desai*** (supra).

5. Learned counsel for the State, on the other hand, vehemently opposed the contentions raised by the learned counsel for the petitioner submitting that spurious liquor was transported in the vehicle and the same being reported to be unfit for human consumption by the chemical examiner cannot be released in favour of the Petitioner and justified the order impugned to have been passed in accordance with law. He further submitted that the ratio of decision cited does not have application to the fact of present case.

6. Vide order dated 22.04.2022 this court passed a direction to the IO to file affidavit along with the copy of the seizure list and chemical examination report in respect to the samples drawn which the I.O has complied.

7. In the said direction the Court had specifically asked the I.O to clarify as regards the fact how 94 cases of IMFL were found in the vehicle while 68 cases of IMFL along with 33 cases of beer was purchased against the invoice dated 08.10,2021.

8. In the affidavit the I.O has made it clear that the vehicle was not carrying the material shown in the invoice but 94 cases duplicate IMFL only of different brand was detected and the persons transporting the same could not produce any document.

9. The copy of the chemical examination report indicates the sample liquor to be containing suspended particles and is unfit for human consumption.

10. The Petitioner has not challenged the report of the chemical examiner. His sole argument is that he had loaded the MGQ against invoice dated 08.10.2021 and as such the seizure is illegal and he is entitled for the release.

11. Needless to say that human life is very precious. Protection of life and liberty of the citizen being a paramount consideration for the state as envisaged in the constitution of India any laxity in this regard vis-à-vis the action of the state cannot be accepted or tolerated in as much when it speaks of the governance of the state as well. In sequel to such onerous duty of the state, it is obvious to expect that its instrumentalities are too alive to their responsibilities while performing the duties more so when it directly relates to the human life.

12. Notwithstanding the fact that the Government has policy to manufacture and sell liquor, simultaneously it ensures the quality. Massive hunt is being undertaken by the concerned departments day in and out to curb illegal activities in the sale of liquor. However, it is an uphill task to expect an absolute “no zone” for illegal sale of liquor. Loss of human life on consumption of spurious liquor though cannot be taken as a common phenomenon nevertheless it cannot be denied to be a menace for the society. Almost every morning one news item would be showing loss of life or lives on consumption of spurious liquor.

13. Under this back ground, when the case in hand is examined admittedly there is a chemical examination report that apparently suggests the seized liquor to have contained ‘suspended particles and unfit for human consumption’. In such an eventuality no prudent man would expect a court to become a party to the risk that may ensue upon release of the seized product. This is because release in the hands of the Petitioner who is engaged in the business cannot be guarded as to how the same would be put to use. It can’t be expected that the Petitioner who is insisting for release of the product would destroy it or would not for its value in return.

14. Consequently, no manner of laxity can be shown in dealing with such product less to speak of its release. The principles enunciated in the decision(supra) cited by the learned counsel for the Petitioner not only cannot be quarreled with but has to be respected in later and spirit, however, the facts and circumstances in the present case being not in consonance there with cannot be brought to application in favour of the Petitioner.

15. This Court, therefore, finds no illegality or infirmity in the order impugned dated 5th March, 2022 in order to invoke its jurisdiction under Section 482 Cr.P.C. The CRLMC accordingly stands dismissed. The I.O is directed to deal with the seized articles in accordance with law.

(Chittaranjan Dash)
Judge

KC Bisoi/Secretary