

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

**CRIMINAL APPLICATION NO. 674 OF 2020**

Kirtikumar S/o. Gagubhai Panchmatia,  
age 65 years, Occu. :- Business,  
R/o. :- Plot No.135, Near Radhakrishna  
Temple, Wardhaman Nagar, Nagpur,  
Tahsil and District Nagpur

} .. Petitioner

**Versus**

1. State of Maharashtra,  
through officer-in-charge of Police  
Station Mulchera, Tahsil :- Mulchera,  
District :- Gadchiroli
  2. Sub-Inspector of Police, Shri Madhukar  
S/o. Pochayya Naitam, Police Station  
Mulchera, Tahsil :- Mulchera,  
District :- Gadchiroli
- } .. Respondents

Mr. H. R. Gadhia, Advocate for petitioner.  
Mr. S. M. Ghodeswar, APP for respondent No.1.

**CORAM : MANISH PITALE AND**  
**VALMIKI SA MENEZES J.**

**PRONOUNCED ON : 25/08/2022**

**ORAL JUDGMENT** [Per : Manish Pitale J.]

**Admit.** Heard finally by consent of the learned  
counsel appearing for the rival parties.

(2) By this application, the applicant is seeking quashing of FIR No.29 of 2020, dated 27/05/2020, registered at Police Station Mulchera, District Gadchiroli for the offences under Section 70, 98(1)(c) and 83 of Maharashtra Prohibition Act, 1949, insofar as the applicant is concerned.

(3) The aforesaid First Information Report (FIR) came to be registered against the applicant and other accused persons on the basis of a truck being apprehended on information received that material was being transported therein, which was to be used for the purposes of illegally distilling liquor. Upon the truck being apprehended and the material being seized, it was recorded that there was inedible Jaggery, among other things, being transported in boxes, some of which were attributable to the applicant before this Court. On this basis, the aforesaid FIR stood registered for the said offences against the applicant.

(4) Mr. Gadhia, learned counsel for the applicant invited attention of this Court to Sections 70, 83 and 98(1)(c) of the said Act

to emphasize that in order to register offences against the applicant, it ought to be *prima facie* shown that “molasses” as defined in Section 2(28) of the Act was being illegally transported. By inviting attention to the definition of “molasses” under the said provision and thereafter, referring to report dated 26/06/2020, submitted by the Regional Public Health Laboratory, which had analyzed the Jaggery seized during the course of the said incident, it was submitted that the report belied the claim of the Investigating Authority that “molasses” was being illegally transported.

(5) The learned counsel for the applicant submitted that the manner in which the said report was obtained and it became available to the applicant, was described in detail in the application and therefore, this Court could certainly look into the said report to examine the correctness of the contention raised on behalf of the applicant. It was submitted that when the very basis of the allegation was taken away, on the basis of material available on record, the criminal proceeding ought not to continue further against the applicant, as it would amount to an abuse of the process of law.

(6) Mr. Ghodeswar, learned APP, appeared on behalf

non-applicant State and produced the case diary for our perusal. It may be noted that while issuing notice on 16/10/2020, this Court recorded that the aforesaid report of the laboratory indicated that Jaggery was being transported and on that basis limited interim order was granted in favour of the applicant directing that the investigation may go on, but charge-sheet shall not be filed without the leave of this Court.

(7) The learned APP fairly brought to our notice that the laboratory report, relied upon by the applicant was indeed in the context of the Jaggery that was seized during the course of the incident in the instant case, by referring to the letter number along with which samples were forwarded to the said laboratory.

(8) The learned APP further submitted that in the reply filed before this Court, it was pointed out that large quantity of Jaggery was being transported to a particular village in Gadchiroli District, where liquor is banned and so is the selling and distilling thereof. It was submitted that this Court may take into consideration the aforesaid aspect of the matter, while disposing of the present application.

(9) We have heard the learned counsel for the parties and we have perused the material on record, including the case diary. We find that the criminal proceeding can continue against the applicant, only if atleast a *prima facie* case is made out for an offence under Sections 70 and 98(1)(c) of the aforesaid Act, Section 83 thereof pertaining only to penalty for conspiracy.

(10) A perusal of Section 70 and 98(1)(c) of the aforesaid Act would show that for attracting the said provision, there ought to be illegal import of “molasses” as defined under Section 2(28) of the said Act. In this context, we perused definition of molasses under Section 2(28).

(11) In the present case, although charge-sheet is yet to be filed against the applicant and the matter is at the stage of investigation and while considering the contentions raised on behalf of the applicant, this Court ought to peruse the material available on record only for *prima facie* consideration, we find that in the application at paragraph 9, the applicant has explained in detail as to how he could obtain copy of the report of the Regional Public Health

Laboratory dated 26/06/2020. Paragraph 9 of the application reads as follows :-

**“9.** *Thereafter, since the aforesaid jaggery and other products came to be seized by the police, one Bimal Subal Sarkar moved an application u/s.457 of the Code of Criminal Procedure, 1973 (hereinafter, referred to as “the CRPC”, for the sake of brevity) for delivery of such property to the person entitled to the possession thereof before the Hon’ble Nyayadhikari, Gram Nyayalaya, Mulchera. Said proceedings are registered as Criminal Miscellaneous Application No. 8/2020. In the said proceedings, a request was made on behalf of the said applicant Mr. Bimal Subal Sarkar to the Hon’ble Nyayadhikari, Gram Nyayalaya, Mulchera to direct the respondent no.1 to produce copy of report of laboratory analysis of samples of Jaggery and other items seized in connection with Crime No.29/2020. Accordingly, it appears that, u/s. 91 of the CRPC, 1973 the Hon’ble Nyayadhikari, Gram Nyayalaya, Mulchera was pleased to direct the respondent no.1 to produce various sample testing reports of jaggery and other items seized by it. Consequently, the respondent no.1 produced various reports of samples of jaggery and other products seized by it before the Hon’ble Nyayadhikari, Gram Nyayalaya, Mulchera in Criminal M.A.8/2020. Said reports were issued by the Regional Public Health Laboratory, Nagpur of Government of Maharashtra (hereinafter, referred to as “government laboratory”, for the sake of brevity) and were exhibited as Exhibit 9 in Criminal M.A.8/2020. The counsel appearing for the applicant in the court of Hon’ble Sessions Judge, Gadchiroli procured a certified copy of those different reports. Applicant submits that reports of government laboratory in respect of other products like Alum etc. seized by the respondent no.1 do not concern the applicant as there is no allegation against the applicant regarding those products. However, since the only allegation against the applicant is regarding supply of inedible jaggery for the purposes of usage of distilling liquor, the applicant is enclosing herewith as **ANNEXURE-G** a xerox of the certified copy of the said government laboratory report dated 26/06/2020 bearing No.RPHL/II/G-1129-1133/286/2020 in respect of the jaggery seized by the respondent no.1. Bare perusal of the said report shall reveal that the samples of jaggery/Gur seized by the respondent no.1 police station came to be submitted to the aforesaid government laboratory for analysis vide letter No.479/2020 dated 01/06/2020 and that the same came to be received by the said government laboratory*

*on 02/06/2020. Said report dated 26/06/2020 further reveals that, the samples of jaggery/Gur came to be examined on 15/06/2020 and onwards. The samples of jaggery/Gur were given Material No.13/2020. Said report further reveals the result of examination of said samples of jaggery/Gur and explicitly mentions therein that, the said samples conforms to the standard of jaggery/Gur as laid down under the Food Safety & Standard (Food Product & Food Additives) Regulations, 2011.”*

(12) In view of the specific statement made in the application in the above quoted paragraph 9, we are satisfied that the applicant was able to obtain a copy of the laboratory report in a legal manner and that this Court could peruse the same, provided it could be shown to be the report pertaining to the Jaggery that was seized during the course of the incident.

(13) In this context, as noted above, the learned APP fairly submitted from documents available in the case diary that the outward number of the letter along with which the samples were forwarded to the laboratory is indeed the same as mentioned in the report dated 26/06/2020. Therefore, we are satisfied that the report available on record indeed pertains to the Jaggery that was seized during the course of the incident. A perusal of the aforesaid report would show that after stating the details about the physical appearance and constituents of the Jaggery, it is specifically stated in

the remark as follows :-

***“Remark :- The aforesaid Samples at Sr. No.1 to 5 conforms to the standard of Jaggery (Gur) as laid down under Food Safety & Standard (Food Product Standards & Food Additives) Regulation 2011.”***

(14) The aforesaid report given by the laboratory clearly shows that the Jaggery seized during the course of the said incident confirmed to the standards of Jaggery as laid down in the Food Safety and Standard (Food Product Standards and Food Additives) Regulation 2011, thereby, clearly demonstrating that even *prima facie* it could not be said to be “molasses” as defined under Section 2(28) of the aforesaid Act.

(15) We are of opinion that when there is material available to indicate that even *prima facie* it cannot be said that “molasses” was being transported, the offences under Sections 70 and 98(1)(c) of the said Act are not attracted against the applicant before this Court.

(16) We feel that in the face of such material, it would be an abuse of the process of law, if the criminal proceedings are allowed to continue against the applicant and that ends of justice would be met

if this Court exercises power under Section 482 of the Cr.P.C. in favour of the applicant. The material available on record indicates that even if the allegations levelled against the applicant are taken as it is and the material that has come on record in the case diary is also appreciated and accepted as it is, at least insofar as the applicant is concerned, no case is made out for further continuation of the criminal proceedings. There is no possibility of the applicant being convicted, even if the matter is allowed to proceed further.

(17) In view of the above, the application is allowed in terms of prayer clause (1), which reads as follows :-

*“1. Quash and set aside the quashing of First Information Report dated 27/05/2020 [ANNEXURE – E] lodged by the respondent no.2 vide Crime No.29/2020 for offences punishable u/s. 70, 98(1)(c) and 83 of Maharashtra Prohibition Act, 1949 as against the applicant herein.”*

(18) Needless to say quashing of the FIR is restricted to the applicant before this Court.

[ VALMIKI SA MENEZES ]

[ MANISH PITALE J. ]