

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

CRIMINAL WRIT PETITION NO. 761 OF 2021
Shalikram Tulshiramji Jaiswal...Versus...Usha Shyam Jaiswal

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Mr. Abdul Subhan, Advocate for the petitioner
Mr. S.S.Shingane, Advocate for Respondent

CORAM : AVINASH G. GHAROTE, J.

DATE : 22/03/2022

1] Heard Mr. Subhan, learned counsel for the petitioner and Mr. Shingane, learned counsel for respondent.

2] The petition challenges the judgment passed by the learned Sessions Court dated 20.2.2020, whereby the order dated 3.10.2019 passed by the learned JMFC issuing process has been quashed and set aside.

3] Mr. Subhan, learned counsel for the petitioner submits that the judgment of the learned Sessions Court suffers from an infirmity for the reason that the affidavit dated 23.7.2008 filed by the respondent was a false affidavit, which position has not been considered by the learned Sessions Court. He therefore submits that the impugned judgment needs to be quashed and set aside and the order of issuance of process by the learned JMFC needs to be restored.

4] Mr. Shingane, learned counsel for the respondent opposes the petition and submits that the affidavit dated 23.7.2008, was sworn by the respondent in support of the plea that one of her sons did not have any other business, which has to be read in context of the purpose for which the affidavit was sworn, namely the transfer of FL-II license, which was in the name of the father-in-law of the respondent, who was also the father of the petitioner, namely Tulshiram Jaiswal, in a proceeding filed by Kailasbai Jaiswal. He therefore submits that the order of the learned JMFC dated 3.10.2019 which did not consider this position has rightly been quashed and set aside by the learned Sessions Court.

5] It is not in dispute that Kailasbai Tulshiram Jaiswal had filed an application for transfer of the FL-II license in the name of Tulshiram Jaiswal, in her name entirely, which application was filed in the Excise Department with the Collector. It is for opposing the application filed by Kailasbai Tulshiram Jaiswal, that the respondent herein is claimed to have sworn an affidavit on 23.7.2008, in which a statement was made by her that she had four issues, two sons and two daughters, the daughters being married and residing at their matrimonial house, the sons residing with her. A further statement was made that the younger son was having CL-III license at New Locality Badnera, however, her elder son namely Shailesh Shyamkumar Jaiswal had no other business,

in view of which he should be given 40% share in the FL-II CLFL TOD-III license at Railway Station Square at Badnera. This statement that the elder son did not have any business made in the affidavit dated 23.7.2008, is the bone of contention as it is alleged that the elder son of the respondent had the business of Petrol Pump and agricultural business in his name.

6] The purpose of swearing the affidavit dated 23.7.2008 was in the context of the application made by Kailasbai Tulshiram Jaiswal for transfer of the FL-II CLFL TOD-III License at New Colony at Badnera Railway Station Square and therefore, the statement made in the affidavit has to read and understood in that context, considering which I do not find any falsity in the same. It is also material to note that there is no statutory requirement either in the Maharashtra Country Liquor Rules or Foreign Liquor Rules or any notification thereunder brought to my notice which would indicate that there is requirement that the affidavit be filed in a particular form for the transfer of liquor license or for that matter for claiming a share therein, which being the situation, in my considered opinion, the judgment rendered by the learned Sessions Court cannot be faulted with. I do not see any merit in the petition, the same is accordingly dismissed.

Rvjalit

JUDGE

Digitally sign by RAJESH
VASANTRAO JALIT
Location:
Signing Date: 22.03.2022 19:47