**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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CRM-M-41075-2018 (O&M)
Date of decision: 17.11.2022

ARVIND SINGH

....Petitioner

Versus

STATE OF PUNJAB

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

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Present : Dr. Surinder Singh Joshi, Advocate for the petitioner.

Mr. Manipal Singh Atwal, DAG Punjab.

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AMAN CHAUDHARY. J.

This petition has been filed under Section 482 Cr.P.C. for quashing of FIR No.28 dated 21.01.2017, under Section 61, Punjab Excise Act, 1914 registered at Police Station Zirakpur Police Post Dhakoli, District SAS Nagar (Mohali).

Learned counsel for the petitioner vehemently contended that in view of section 61(A) of the Punjab Excise Act, 1914 (in short, the Act), possession of liquor was no longer offence and only penalty could be imposed for the same. No police officer has authority to register an FIR as the same could only be at the hands of Excise Department which can impose penalty. He further submits that the liquor in question had been purchased after obtaining a valid permit on 19/20.01.2017, vide bill dated 21.01.2017 Annexure P-5, amounting to Rs.63,000/-, as such, there is no violation of the aforementioned Act. Learned counsel for the petitioner submits that the aforesaid liquor was purchased for the marriage of the nephew of the employer of the petitioner, which was stated to be held on 20.11.2017. After the marriage ceremonies, while the petitioner was returning home, he was apprehended on the way with the left over liquor, which led to the lodging of the FIR. Learned counsel further submits that as per Sections 46 and 50 of the Punjab Excise Act, 1914, the power of arrest, detention, search of persons arrested and investigation of offences, are given to the Excise Inspector. Learned counsel further submits that cancellation reports in the case was prepared by the police on 30.04.2018 and 08.04.2019 which were approved by the Deputy Superintendent of Police, however, the same were not accepted by the Court and returned with direction for further investigation. Learned counsel further submits that even thereafter the cancellation was again filed on 05.10.2019, which is pending before the Court concerned. In view of the above, learned counsel submits that no case having been made out, prays for quashing of the said FIR.

Learned State counsel refers to para 2 of the reply filed to the petition, to submit that the cancellation has been filed on the basis of the fact that the permit was valid from 19.01.2017 to 20.01.2017, but he was apprehended on 21.01.2017, while returning from the marriage ceremonies that continued till the morning along with, the unused liquor, which was being carried back, from Shivalik Hotel to their residence. He further refers to para 3 thereof to submit that during investigation no incriminating evidence has been found against the petitioner, who was working as a driver. He submits that cancellation report was yet again filed on 08.04.2019 and even the statement of HC Pawan Kumar/315 PP Dhakoli, who is the complainant in the case was also recorded, had stated that investigation was conducted by ASI Ramesh Lal, who had also not found the accused guilty and had prayed for the acceptance of the cancellation report. The statement of complainant-HC Pawan Kumar is taken on record as Mark-A.

Learned State counsel has produced the copy of the order dated 01.11.2022 passed by the Judicial Magistrate First Class, Derabassi wherein the case had been adjourned to 04.01.2023, as the defence counsel has not produced the order passed by this Court. The said order dated 01.11.2022 is taken on record as Mark-B.

Heard.

Admittedly, the liquor in question had been purchased after obtaining a valid permit from 19.01.2017 to 20.01.2017, by one Updeep Singh for the marriage of his nephew of Surinder Singh Joshi. While returning from the marriage ceremonies that continued till the morning, the petitioner, who was a mere driver, was apprehended on 21.01.2017 by the police, alongwith the unused liquor, being carried back, from Shivalik Hotel to their residence.

It is apposite to refer the judgment of this Court in the case of **Jarnail Singh and others vs. State of Punjab**, 2008(3) RCR (Crl.) 749, wherein it has been held that "after amendment carried out vide Punjab Act No.10 of 2003 whereby Section 61 of the 1914 Act was amended a new Section 61-A was added, the scheme of the 1914 Act had undergone a change. After the amendment, a distinction was made with regard to the penalties for offences triable by a Court and penalties for offences not triable by a Court. In terms of Section 61(1)(aa) with effect from 2.5.2003, any import, export, transport or possession of any intoxicant other than liquor in contravention of any provision of the 1914 Act, rules, notification or order made thereunder or of any licence, permit or pass granted under the Act was punishable with imprisonment for a term as prescribed. Whereas the newly added 6 of 8 Section 61-A after the amendment carried out vide Punjab Act No.10 of 2003, with effect from 2.5.2003, provided that whoever in contravention of any provisions of the 1914 Act or rules or notification or order or any licence, permit or pass granted under the Act inter alia imports, exports, transports or possess any liquor, shall along with liquor and means of transport be detained by an Excise Officer. The procedure to be followed after its detention by the Excise Officer has further been provided in the Section."

This Court in the case of **Kamaljit Singh vs. State of Punjab and others** 2010(2) RCR (Criminal) 331, observed as under:

> "6. Learned counsel for the petitioner vehemently contended that in view of section 61(A) of the Punjab Excise Act, 1914 (in short, the Act),possession of liquor was no longer offence and only penalty could be imposed for the same. There is considerable merit in the contention. Section 61(A) was inserted in the Act vide Amendment Act No. 32 of 2006 notified on 25.8.2006 and so the said section was operative when the impugned FIR was registered. Section 61(A) of the Act is reproduced herein:-
> **"61-A. Penalty for offences not triable by a court.-** (1) Whosoever, in contravention of any provision of this Act, the rules framed thereunder, any notification issued or any order made or any license, permit or pass granted under this Act, imports, exports, transports, or possesses any liquor, shall alongwith liquor and means of transport, except the passenger buses, owned by the Central Government or the State Government or any of their undertaking, be detained by an Excise Officer, who shall make a report to the Assistant Excise and Taxation Commissioner, in-charge of the district and to the Deputy Excise and Taxation Commissioner, in-charge of the Division, within a period of twenty four hours of such detention. The Excise Officer shall forward such liquor and the means of transport along with the necessary documents to the Deputy Excise and Taxation Commissioner incharge of the District.
> (2) On the receipt of the report referred to in sub-section (1), the Deputy Excise and Taxation Commissioner incharge of the Division, shall record the statements of the offender and the officers, concerned with the case, and release the offender.
> (3) The Assistant Excise and Taxation Commissioner incharge of the district, may impose the following penalties after providing the offender a reasonable opportunity of being heard in case a liquor detained is licit, on which the excise duty and other levies have been paid in the State of Punjab, namely :-

(a) rupees five thousand in case of detection of such liquor upto two cases i.e. 18 bulk litres; and
(b) rupees ten thousand in case of detection of such liquor exceeding more than two cases i.e. 18 bulk litres.
(4) The Assistant Excise and Taxation Commissioner in-charge of the district, may confiscate the illicit liquor and may also impose the following penalties after providing the offender a reasonable opportunity of being heard in case the liquor detained is illicit, on which the excise duty and other levies have not been paid in the State of Punjab, namely:-
(a) rupees twenty five thousand in case of detection of such liquor up to five cases i.e. 45 bulk litres;
(b) rupees fifty thousand in case of detection of such liquor exceeding five cases i.e. 45 bulk litres, but not exceeding fifty cases i.e. 450 bulk litres; and
(c) rupees one lac in case of detection of such liquor exceeding fifty cases i.e. 450 bulk litres.
(5) If the penalty referred to in sub-section (4), is not paid within a period of one week from the date of the order, then the Deputy Excise and Taxation Commissioner in-charge of the Division shall pass a speaking order of confiscation of the means of transport and the liquor after giving an opportunity of being heard to the offender and the owner of the means of transport. In case the owners of the liquor and the means of transport are not available, then the order for confiscation may be passed by the Deputy Excise and Taxation Commissioner incharge of the Division by affording an opportunity of being heard to the offender, who has been caught with the goods. The confiscated liquor shall thereafter, be destroyed under the supervision of the Deputy Excise and Taxation Commissioner in-charge of the Division and an authenticated copy of the said order shall be supplied to the affected person free of cost.
(6) The Deputy Excise and Taxation Commissioner in-charge of the Division, shall put to auction the confiscated means of transport with a period of thirty days from the date of the order of confiscation passed under sub-section (5). The amount received from auction after deducting the expenditure incurred on it, shall be adjusted towards the payment of penalty by the owner. The unrecovered amount of penalty, if any, shall be recoverable as arrears of land revenue."
"7. Perusal of the aforesaid provision reveals that if a person is found in possession of liquor then penalty can be imposed on him in accordance with the provisions contained in section 61 (A) of the Act."
"9. Perusal of the aforesaid provision reveals that possession of liquor is not punishable under this provision. It is not the allegation of the prosecution that the petitioner had sold any intoxicant. Consequently, the petitioner is not covered by clause (a) of section 61(2) of the Act. The petitioner was merely found in possession of liquor which is categorically

covered by section 61(A)(1) of the Act."

The aforesaid judgments were further followed by this Court in the case of **Raka Ghira vs. UT, Chandigarh,** CRM-M-18837-2017, decided on 31.7.2017, wherein IMFL bottles were found during a raid at the house of the petitioner therein, wherein, the proceedings were quashed by observing that, "I find that the question of law that has been raised in the present petition has already been decided by this Court in the aforesaid two reported decisions. It is not in dispute that the provisions of the amended Act are fully applicable to the UT Chandigarh where the offence is alleged to have taken place. In that view of the matter, it is seen that as per the ratio of the aforesaid two decisions, the police authorities of UT/CBI which lodged the FIR and filed the challan and is prosecuting the petitioner is sans any authority of law and the authority clearly was with the Excise Officer provided by the amended Act and not with the respondent police department. Careful perusal of the above referred two decisions rendered by this Court, in my respectful agreement, show that the prosecution in question was launched in absence of authority in the respondent police department and therefore, the same is null and void and without authority of law." Further held that "in view of the above legal position cited by this Court, this Court will have to follow the said reported judgments. In so far as the question about commencement of trial is concerned, I find that since it has been held that the filing of FIR/challan/charge against the petitioner itself is without any authority of law and void ab initio, the criminal case trial must be held to be the abuse of process of law. The following maxims would aptly apply:- "Debile fundamentum fallit onus", meaning thereby that when the foundation falls, every thing falls; and "sublato fundamento cadit opus"; meaning thereby, in case a foundation is removed, the superstructure falls." It is the duty of this Court to exercise inherent power under Section 482 Cr.P.C. in such an eventuality"

The State has filed reply to the instant petition, the relevant paras of which read thus:-

> 1. That the petitioner has filed the present petition before this Hon'ble court for quashing of FIR No. 28 dated 21.01.2017 under Section 61 Punjab Excise Act 1914 registered at P.S. Zirakpur P.P. Dhakoli (as it was at that time) (Annexure P-1). It is submitted that on 08.02.2017 Updeep Singh owner of the aforesaid liquor with whom petitioner Arvind Singh has been working as his driver, has also submitted an application to the Sr. Superintendent of Police, SAS Nagar submitting that he had purchased of 4 cases of wine/ alcohol for marriage of his nephew son of Sh. Surender Singh Joshi vide permits dated 18.01.2017 and 16.01.2017 and bill dated 20.01.2017 for private possession, transportation and service liquor for the special occasion of marriage of his nephew to be used in the marriage ceremony in Shivalik Hotel Chandigarh. After solemnization of marriage on 20.01.2017 night, 2 and 2 cases of aforesaid liquor were being carried at his home at Zirakpur but they were apprehended on the way which resulted into registration of said FIR. He has also produced the copies of permits dated 18.01.2017 and 16.01.2017 and bill dated 20.01.2017. The aforesaid permits and bill are found valid and genuine. The police of Police Post Dhakoli conducted investigation into the matter and in view of the evidence collected during investigation, cancellation report was prepared by the police in the FIR Annexure P-1 vide report dated 16.09.2017. The said cancellation report was examined and approved by the Senior officers also and as such on 30.04.2018 the cancellation report was submitted to the court of Ld. Illaqa Magistrate Derabassi but the Ld. Judicial Magistrate Ist Class Derabassi on perusal of the cancellation report, directed the respondent police to further investigate the matter.
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> 2. That thereafter the investigation was conducted by ASI Ramesh Lal and during investigation no incrimination evidence was found for challaning the accused and as such again cancellation report was prepared on 12.03.2019 which was approved by D.S. P. Derabassi on 22.03.2019 and further approved by SSP, SAS Nagar Mohali on 27.03.2019 and as such on 08.04.2019 the cancellation report was again submitted to the court of Ld. Judicial Magistrate Derabassi but the Ld. Judicial Magistrate Ist Class Derabassi vide its order dated 08.04.2019 again directed to further investigate the matter taking into account the possession of the recovered

> liquor bottles from the custody of accused as on 21.01.2017 when he was arrested in the present case. The Ld. Judicial Magistrate Ist Class Derabassi has mentioned in its order dated 08.04.2019 that the aforesaid permit was valid for 19.01.2017 and 20.01.2017 but the accused was apprehended on 21.01.2017 and for 21.01.2017 he was having no valid permit. That it is further submitted that the marriage of nephew of Updeep Singh was solemnized during the night of 20.01.2017 and on 19.01.2017 the lady Sangeet ceremony was performed. As the marriage ceremonies continued till late night, therefore, after completion of marriage ceremonies the said Updeep Singh along with his family members was returning to his house No. 51-52, AKS colony, Zirakpur. The unused liquor was being carried in the morning of 21.01.2017 when they were returning from Shivalik Hotel to his house but on the way the car was apprehended at Police Naka which resulted into registration of FIR Annexure P-1. During the investigation no incriminating evidence has been found against the accused-petitioner who was working as driver of aforesaid Updeep Singh."

The FIR had been lodged by the police against the petitioner, who was a driver of car, in which the unused liquor, for the purchase of which his employer had obtained a permit, was found, though the power to detain was with the Excise Officer. There is no allegation against the petitioner regarding removal of any intoxicant from any distillery, brewery or warehouse established or licenced nor of any intoxicant having been recovered.

A distinction has been drawn as per the amended provisions of the Act between the offences in respect of the intoxicants other than the liquor which would be triable by a court of law, while the offences under the Excise Act would be adjudicated/decided by the Excise Department and its officers.

In view of the aforesaid and the judgments referred to above, the Excise Officer having the authority to detain and the Department of Excise and Taxation having the jurisdiction to impose penalty in case involving facts, as that in the present case, therefore, the initiation of proceedings by lodging of FIR are void ab initio and therefore, continuation thereof being an abuse of process of law, deserve to be quashed.

Resultantly, the present petition is allowed and as a sequel thereto, FIR No.28 dated 21.01.2017, under Section 61, Punjab Excise Act, 1914 registered at Police Station Zirakpur Police Post Dhakoli, District SAS Nagar (Mohali) and consequential proceedings arising therefrom are quashed.

(AMAN CHAUDHARY)
JUDGE

November 17, 2022
S.Sharma(syr)/GSV

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No