HIGH COURT AT CALCUTTA
IN THE CIRCUIT BENCH AT JALPAIGURI
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

PRESENT:
THE HON'BLE JUSTICE BIVAS PATTANAYAK

CRR 95 of 2023
The State of West Bengal
versus
Prakash Gupta

For the Petitioner	:	Mr. Joyjit Choudhury, Ld. AAG Mr. Aditi Shankar Chakraborty, Ld. APP Mr. Arjun Chowdhury, Advocate
Heard on	:	03.08.2023
Judgment on	:	10.10.2023

Bivas Pattanayak, J. :-

1. This revisional application has been filed by the petitioner under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') challenging order dated 6th March, 2023 passed by learned Sessions Judge, Darjeeling in Criminal Revision No. 12 of 2022 filed against the order dated 16th August, 2022 of the learned Chief Judicial Magistrate, Darjeeling under Section 451 of the Code arising out of State Excise case bearing no. C.R. 38 of 2018 under Sections 9/10/12/18 and 52 of the Bengal Excise Act, 1909 for offence punishable under Section 46A (c) of the said Act.

2. The brief fact of the case is as follows:-

(i) On 19th July, 2018 the Officer-in-Charge, Sadar Excise Circle, Darjeeling Excise District intercepted a silver-coloured Maruti Suzuki van on the basis of prior information at Mungpoo Bypass in front of

National Hydroelectric Power Corporation (NHPC) under Rangli Rangliot Police Station, Darjeeling and recovered 180 bottles of beer and 12 bottles of rum. The bottles had labels showing that those were manufactured in Sikkim and registered for sale in that State. A case was registered under Sections 9/10/12/18/52 of the Bengal Excise Act, 1909 for offence punishable under Section 46A (c) of the Act. The vehicle and the stock of foreign liquor were seized after observing all formalities. The driver of the vehicle was arrested and taken into custody by Officer-in-Charge, Darjeeling Sadar Circle.

(ii) On 24th June, 2022, Investigating Officer of the case submitted a prayer for disposal of the Alamat under Section 451 of the Code before the learned Chief Judicial Magistrate, Darjeeling. The learned Chief Judicial Magistrate, Darjeeling allowed the application with the direction that the O.C. of Excise, Sadar Circle, Darjeeling to get such liquors, if not tampered with, sold by auction subject to a reserved price which shall be equal to the amount of duty leviable on such liquors or similar liquors in the place where the sale takes place. If such price is not obtained, the liquors shall be destroyed. The O.C. is further directed to get such liquors which have become unfit for consumption destroyed.

(iii) The aforesaid order of the learned Chief Judicial Magistrate, Darjeeling was assailed in revision before the learned Sessions Judge, Darjeeling being Criminal Revision 12 of 2022. The said revisional application was rejected on the ground that Rule 118 of the West

Bengal Excise (Foreign Liquor) Rules, 1998 is not applicable for auction/sale of liquor, that foreign liquor imported in the State without paying duty is liable for destruction even though the same is fit for consumption by human and that the Court below has also passed order for taking necessary safeguards.

3. Being aggrieved by and dissatisfied with the impugned orders, the petitioner-State of West Bengal has preferred the present revisional application.

4. Mr. Joyjit Choudhury, learned AAG submitted that the entire stock of seizure was recovered by the Excise Authority on the relevant date not from any licensed foreign liquor manufacturer or licensed warehouse or wholesaler or vendor, being a part of licit network but from a person who did not have authority to possess and sell liquor. The circumstances in which the liquor was recovered do not provide any assurance that the said liquor had a licit origin and handled in a licit manner in its movement from its point of origin to the place of recovery. Mere presence of a label on the body of the seized bottle cannot be taken as unimpeachable evidence of licit character of such liquor. Such clandestine supply for sale of liquor raises presumption of absence of licit character of such liquor and such presumption has a statutory foundation in Section 47 of the Bengal Excise Act. The words "Licit origin and not tampered with" in Rule 242 of the West Bengal Excise (Foreign Liquor) Rules encompasses the entire chain of movement of a liquor from the place of manufacture to the point of delivery of liquor to the customers and it permit for sale of such liquor. The learned

Sessions Judge, Darjeeling failed to appreciate that Rule 242 does not permit disposal by sale of bottles of liquor which does not have licit origin. Moreover, it can safely be presumed that quality of seized beer had deteriorated considerably in four years after seizure making it unconsumable for human beings. Although the State will gain revenue by sale of liquor bottles, but above all safety and well being of the citizens is prime concern of a State over earning revenue and, therefore, the disposal of liquor bottles should be by way of destruction rather than by sale. Further since the seizure has been made from unknown source or illicit chain, the parameters laid down in West Bengal Excise (Foreign Liquor) Rules, 1998 as amended as well as guidelines of the Food Safety and Standards Authority of India (FSSAI), Government of India is to be applied by testing each product and determining its licit character prior to auctioneering as the bottles are potentially unsafe, which is not at all possible in the facts and circumstances of this case for the reason that once the bottles are opened for testing the same cannot be auctioned. The circumstances could have been different had it been seized from a licensed premises. Thus the order of learned Chief Judicial Magistrate, Darjeeling is beyond the scope of rules and if executed will endanger human life and safety. Referring to the decision of Hon'ble Supreme Court passed in ***Sunderbhai Ambalal Desai versus State of Gujarat***[1], he submits that Hon'ble Court has given guidelines that in case of seizure of liquor, prompt action should be taken for its disposal and large quantity of liquor should

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[1] ***(2002) 10 SCC 283***

not be stored in police station in any circumstances. Previously, the Courts following such direction of Hon'ble Supreme Court used to pass order for disposal under Section 451 of the Code. However, the order impugned of the learned Chief Judicial Magistrate, Darjeeling is not in consonance with such proposition laid down by the Hon'ble Court. Further relying on the decision of Hon'ble Andhra Pradesh High Court passed in ***Chundru Narayana versus The Superintendent, Prohibition and Excise and Another***[2], he submitted that liquor seized from illegal possession, which is spurious, is to be destroyed. In light of his aforesaid submissions, he prayed for passing necessary orders for setting aside the order of both the Courts and for disposal of the seized liquors.

5. Despite service of notice, none appeared on behalf of the opposite party.

6. In order to examine the correctness of such direction, it would be apposite to reproduce Rule 242 of West Bengal Excise (Foreign Liquor) Rules as hereunder:

> *"**242. Disposal of confiscated foreign liquor-** Confiscated foreign liquor which are known to have been of licit origin and not tampered with, shall be sold by auction subject to a reserved price which shall be equal to the amount of duty leviable on the article or a similar article. If such price is not obtained, the article shall be destroyed.*
>
> *Other confiscated foreign liquor shall be destroyed."*

6.1. The aforesaid Rule provides that confiscated liquor, which are known to have licit origin and not tampered, shall be sold by auction subject to

[2] (2007) 08 AP CK 0072

reserved price which shall be equal to the amount leviable on such article or a similar article and others are to be destroyed. Before applying Rule 242 for auction, the liquor having known licit origin has to be confiscated and it should not be tampered. None of the aforesaid grounds were available to pass direction for auction. It is an admitted position that those bottles seized are labelled. However, mere presence of labels does not make those seized bottles of licit origin as has been rightly argued by Mr. Choudhury, learned AAG. Rule 242 also does not apply since there is no confiscation and such a stage has not yet come in trial. Now the question arises if there is no confiscation, will such materials be kept in custody of the concerned authority till completion of trial?

6.2. It is apparent on the face of the record that no document of legal possession has been reported during the course of investigation. No one has yet claimed before the Court of its legal ownership. Upon perusal of the materials placed, it is found that on 19th July, 2018 the Officer-in-Charge, Sadar Excise Circle, Darjeeling Excise District seized 15 cases (total 180 bottles) of Sikkim made Hit Beer of 650 ml each (total volume 117.00 ltrs) and one case (12 bottles) of Sikkim made Millennium XXX Rum of 750 ml (total volume 9.0 ltrs) at Mungpoo Bypass from a Maruti van. Samples were drawn at the spot, duly sealed and labelled. The driver was arrested, seized alamats and sample were taken to safe excise custody. On 24th June, 2022, Officer-in-Charge, Excise Sadar Circle, Darjeeling made a prayer for disposal of the alamats seized under Bengal Excise Act, 1909 under Section 451 of the Code before the learned Chief

Judicial Magistrate, Darjeeling since there was dearth of limited space in the *malkhana*. On 16th August, 2022, the learned Chief Judicial Magistrate, Darjeeling passed the following order:

> *"Now, it seems that such liquors have a legitimate origin and samples have already been drawn. So, I am of the view that such seized articles should be disposed of in accordance with Sec 451 of the Cr.P.C.*
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> *Accordingly, the O.C. of Excise, Sadar Circle, Darjeeling, is directed to get such liquors, if not tampered with, sold by auction subject to a reserved price which shall be equal to the amount of duty leviable on such liquors or similar liquors in the place where the sale takes place. If such price is not obtained, the liquors shall be destroyed. The O.C. is further directed to get such liquors which have become unfit for consumption destroyed.*
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> *The aforesaid entire auction / destruction process shall be conducted in the presence of the Deputy Excise Collector, Sadar Circle, Darjeeling, or an Executive Magistrate, who shall ensure the preparation of the necessary inventory/panchanama before such exercise.*
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> *The entire sale proceeds shall be deposited in favour of the Government in a transferrable head.*
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> *All usual formalities are also to be complied with during such disposal process and due regard shall be paid to the principles embodied in Rule 240 (i.e. Permit for possession of confiscated articles in excess of limit of retail sale) of the Rules under the Bengal Excise Act, 1909.*
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> *A certified inventory and a final certificate regarding the disposal of such seized liquor shall be given by the aforesaid Deputy Excise Collector, Sadar Circle, Darjeeling / Executive Magistrate, which shall be*

> *submitted before this Court by the O.C. of Excise, Sadar Circle, Darjeeling, after retaining copies of the same.*
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> *The application dated 24.06.2022 by the O.C. of Excise, Sadar Circle, Darjeeling, is thus allowed and disposed of."*

6.3. The learned Chief Judicial Magistrate, Darjeeling passed order for auction/sale of the seized liquors, if not tampered, squarely on the assumption that the seized liquor bottles have a legitimate origin though no such materials were there to primarily hold of licit origin. The wording of the direction for auction/sale passed by learned Chief Judicial Magistrate, Darjeeling appears to be in terms of Rule 242 of West Bengal Excise (Foreign Liquor) Rules. However, to assume that those are of legitimate origin is farfetched. The learned Sessions Judge, Darjeeling has also toed a wrong proposition by observing that the petitioner-State failed to cite any authority that foreign liquor imported in the State without paying duty is liable for destruction even though the same is fit for human consumption. It is pertinent to note that nothing was placed before the Sessions Judge to opine that the seized bottles were fit for human consumption. The material also does not suggest that the import was otherwise valid excepting payment of sufficient duties. It is not the case of the prosecution that those bottles were imported to the State without paying duty. It is simpliciter a case of illegal possession of liquor bottles whose licit origin could not be detected. Section 47 of Bengal Excise Act provides for presumption of commission of offence under Section 46 or 46A of the Act.

6.4. At this juncture, it is appropriate to refer to the observation of Hon'ble Supreme Court in *Sunderbhai Ambalal Desai (supra)* which is as follows:

> *"19. For articles such as seized liquor also, prompt action should be taken in disposing of it after preparing necessary panchnama. If sample is required to be taken, sample may be kept properly after sending it to the Chemical Analyser, if required. But in no case, large quantity of liquor should be stored at the police station. No purpose is served by such storing."*

7. In light of the above discussion and bearing in mind the proposition laid down by Hon'ble Supreme Court in *Sunderbhai Ambalal Desai (supra)*, the impugned orders of the respective Courts are liable to be set aside.

8. The report of Andhra Pradesh High Court in *Chundru Narayana (supra)* pertains to offence under a different Act i.e. Andhra Pradesh Prohibition Act, 1995, hence the proposition does not apply to the case at hand.

9. In the event, the revisional application being no. **CRR 95 of 2023** stands allowed. The Order No.07 dated 6th March, 2023 passed by learned Sessions Judge, Darjeeling in Criminal Revision 12 of 2022 and the Order No.37 dated 16th August, 2022 passed by learned Chief Judicial Magistrate, Darjeeling in C.R. Case No.38 of 2018 are hereby set aside.

10. Petitioner-State of West Bengal is granted liberty to file application in this regard afresh before the learned Chief Judicial Magistrate, Darjeeling who, upon filing of such application, shall dispose of the same in accordance with law.

11. All connected applications, if any, stand disposed of.

12. Interim order, if any, stands vacated.

13. Let a copy of this order be sent to the learned Sessions Judge, Darjeeling for information and the learned Chief Judicial Magistrate, Darjeeling for information and necessary action.

14. Urgent photostat certified copy of this judgment, if applied for, be given to the parties upon compliance of necessary legal formalities.

(Bivas Pattanayak, J.)