

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 66 OF 2023

THE STATE OF MAHARASHTRA

VERSUS

MAHABAL ENTERPRISES THOROUGH ITS MANAGER MR. DEEPAK MADAN
MOHAN VISHWADEVA

...

APP for Petitioner/State : Smt. D. S. Jape
Advocate for Respondent : Mr. Deshpande

...

CORAM : KISHORE C. SANT, J.

DATE : 27th FEBRUARY 2023.

Per Court :

Heard.

1. There is a challenge to an order dated 16.09.2022 passed by the learned Sessions Judge, Dhule in Revision Application No.56/2022, thereby Revision is allowed directing to release goods seized by the police. The respondent was found transporting Gutka/Pan-Masala, which is banned in Maharashtra. The learned Judicial Magistrate First Class by order 09.03.2022 had rejected the application under Section 457 filed by the respondent.

2. The learned APP submits that the State of Maharashtra has issued notification dated 15.07.2021, wherein the manufacturing, selling including transportation of Gutka/Pan-Masala is banned. On 04.01.2022, the said goods were seized in Dhule. The goods were manufactured in December, 2021 and the best before date is six months from the date of manufacture. In this case, the goods are manufactured in December, 2022. She has produced on record the report dated 05.01.2022 prepared by the police in respect of seizure of the goods.

3. It is further case of the petitioner that in such case, the goods could not have been released. The learned JMFC has rightly passed an order. However the learned Sessions Court has not properly considered the case and the fact that there is ban even on transporting of such goods from the State of Maharashtra and has passed the impugned order. It is main contention of the learned APP that now in any case, the goods have been expired as the best before the date is only six months from the date of manufacture and secondly the transporting of Pan-Masala is totally banned in the Maharashtra State. Therefore, she submits that the impugned order is not correct and prays for quashing

of the order. She submits that when the learned JMFC had rejected the application on 09.03.2022, the respondent preferred Revision in July, 2022 and there is no explanation. Had the order been immediately challenged by that time, the goods would not have expired or the best before date could not have gone.

4. As against that the learned Advocate for the respondent submits that the goods in fact have not expired, it is only best before date, before which the goods are to be consumed so in any case the goods can be released. He submits that there is no case of the prosecution that the goods were to be sold in the State of Maharashtra. He submits on record 'Tax Invoice' showing that the goods were to be transported from Faridabad in the State of Haryana to Bangalore in the State of Karnataka. He has even paid the GST of the said amount. He submits that there is no other way to go to Bangalore (Karnataka) from Faridabad (Haryana), except the way of State of Maharashtra. He submits that in any case, when he is owner of the goods, he cannot be deprived of his goods merely because the prosecution is pending and prays for rejection of the petition.

5. The learned APP in support of her case relied upon the judgment delivered by this Court at Nagpur in Criminal Writ Petition No.543/2020. Wherein the petitioners had prayed for quashing of the proceeding.

. The learned Advocate for the respondent from the said judgment, however pointed out that the order impugned in that petition that is notification issued by the State of Maharashtra similar to the previous notification. The said order is held to be operative and effective for the purpose of prohibiting transport of the goods prohibited, within the State of Maharashtra and not to any inter-State transport of such goods. Thus, he submits that this Court though had refused to quash the proceeding, however had in a way allowed the transportation of such goods from the State of Maharashtra. He relies upon an order passed by this Court in Criminal Writ Petition No.739/2021 dated 29.10.2021, in which there is a reference of Writ Petition No.823/2021. Wherein in almost identical facts, the State Government had approached this Court. There also the Revisional Court had directed to release the goods, which were banned in the State of Maharashtra on imposing condition that is by furnishing bank guarantee of the equivalent amount

of the value of the goods.

6. In this case also, this Court finds that it would be in the interest of justice to impose such a condition. Therefore the order passed by the learned Sessions Court to be modified and shall be read as below.

ORDER

- (i) The Criminal Writ Petition No.66/2023 is partly allowed.
- (ii) The order passed by the learned Revisional Court is modified by adding additional condition that the respondent shall furnish the bank guarantee in the sum of Rs.27,84,000/- instead of furnishing indemnity bond of Rs.61,44,000/-.
- (iii) With this, the Writ Petition is disposed off.

[KISHORE C. SANT, J.]

Najeed.