



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

Criminal Writ Petition No. 478 of 2023

Ketan S/o Ishwar Araspure ..vs.. State of Maharashtra, through P.S.O., P.S., Hinganghat,
Tah. Hinganghat, Dist. Wardha]

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

Court's or Judge's orders

Mr. Anand Jaiswal, Senior Advocate with Ms. Radhika Bajaj, Advocate for
the petitioner
Mr. A. R. Chutake, APP for the State/respondent

CORAM : ANIL L. PANSARE J.

DATED : 25-8-2023

The challenge is to the order dated 9-11-2022 passed by learned Sessions Court, Hinganghat in Criminal Revision Application No. 8/2021 thereby confirming the order dated 30-6-2021 passed by learned Judicial Magistrate First Class, Hinganghat in Miscellaneous Criminal Application No. 174/2021.

2. The police officials at Hinganghat Police Station, Wardha received secret information on 16-1-2021 that a Mahindra Bolero Pick-up vehicle bearing registration no. MH-40-BL-2668, which is carrying liquor, has been parked on Chicholi to Yenora Road. Acting on the said tip/information, the police officials of Hinganghat Police Station along with their staff at the spot. They found the foreign and country made liquor is being transported in contravention of transport permit/pass. Accordingly, First Information Report (FIR) bearing No. 61/2021 came to be registered against the driver Chintaman Devidas Chaudhar and one labourer Vaishnav Jaywant Zade for the offences punishable under Sections 65(a),

65(e), 77(a), 82 and 83 of the Maharashtra Prohibition Act, 1949 (for short 'Act of 1949') and Section 130 and 177 of the Motor Vehicles Act, 1988.

3. The petitioner is the owner of liquor. He moved application under Section 457 of the Code of Criminal Procedure, 1973 before the learned Magistrate for release of the liquor. The application was rejected. The challenge failed. The petitioner is before this Court, aggrieved by the orders passed by both the Courts below.

4. Having heard Mr. Anand Jaiswal, learned Senior Counsel for the petitioner and Mr. A. R. Chutake, learned Additional Public Prosecutor, submits that permit/pass was issued for transportation of foreign liquor to Hingana via Kalamb, Wadki, Nandori, Butibori and of country liquor to Digdoh via Deori, Hinganghat, Nandori, Butibori, Digdoh. Learned Senior Counsel submits that Digdoh is located in Hingana Taluka and, therefore, foreign and country made liquor were being transported in one vehicle.

5. The vehicle, however was travelling on Nandgaon-Chicholi Road, which is 13 Km away from the route prescribed in the transport pass. That apart, the case of the prosecution is that the pass issued for the transportation of foreign liquor was for 40 boxes/cases of which 5 were missing. Accordingly, the Courts below found a *prima facie* case under the provisions applied in the FIR.

6. With the assistance of the learned counsels, I have gone through the relevant provisions. Section 98 of the

Act of 1949 provides, amongst other, that whenever any offence punishable under this Act has been committed and where in the case of an offence of illegal transportation of any intoxicant in contravention of the provisions of the Act, rule, regulation, licence, permit, pass or authorization etc. the whole quantity of intoxicant shall be confiscated by the order of the Court.

7. Section 99 deals with return of the articles liable to be confiscated to *bona fide* owner. It provides that during the trial of a case for an offence under this Act if the Court decides that anything is liable to confiscation under the foregoing section, the Court may, after hearing the person, claiming right over the property/goods order confiscation or in the case of any articles, other than an intoxicant, hemp, mhowra flowers or molasses give the owner an option to pay fine as the Court deems fit in lieu of confiscation. The use of word 'may' is in context with the later part of the provisions, which gives option of payment of fine.

8. There is yet another provision that appears to be relevant, which is Section 101 of the Act of 1949. It provides, amongst others, that if the thing/article/goods in question is liable to speedy and natural decay and if the Court is of the opinion that same would be for the benefit of the owner, the Court, may at any time, direct it to be sold.

9. In other words, Section 98 provides for confiscation of intoxicant when the offence has been committed. Section 99 provides that pending trial, order

of confiscation may be passed. Section 101 provides that if the goods/articles in question are perishable, the Court may direct it to be sold. Considering the intent of these provisions, I do not find any perversity in the impugned orders and thus to entertain the petition under the discretionary jurisdiction.

10. At this stage, learned Senior Counsel has made a request to direct the trial Court to expedite the trial and to dispose it of within three months.

11. To my mind, to make a case time bound will be onerous to the trial Court, however, the trial Court is requested to expedite the trial and to decide the same preferably within six months from the date of receipt of order of this Court.

12. The petition is disposed of in above terms.

(Anil L. Pansare, J.)