



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 354 OF 2024

Goel Roadways Transport Company
For Branch Waluj
Branch Officer Sunil Kumar Lamba ... Petitioner

VERSUS

The State Of Maharashtra ... Respondents

.....
Mr. Vikram S. Undre, Advocate for Petitioner
Mr. S.P. Sonpawale, APP for Respondents – State
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 3rd MAY, 2024

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally at admission stage.

2. This petition, filed under Article 227 of the Constitution of India, takes exception to the order dated 30.01.2024 passed by learned Additional Sessions Judge, Vaijapur, District-Aurangabad in Criminal Revision Application No.04 of 2024 and order dated 26.12.2023 passed by learned Judicial Magistrate, First Class, Gangapur, District-Aurangabad in Criminal M.A. No.418 of 2023.

3. Inspector of Excise Department inspected Truck bearing no. MH-04-JK-1785, he found the stock of foreign liquor of Rs.34,83,080/-, without having valid permit from Maharashtra State. Therefore, the said stock of liquor along with the vehicle was seized. FIR no. 186 of 2023 is lodged for offence punishable under sections 65-A, 65-E, 80, 90 and 108 of the Maharashtra Prohibition Act against the accused driver namely Rakesh Sureshchandra Rathod, resident of Akbarpur, District-Dewas (MP).

4. Petitioner is a Transporter who hired the truck for transportation of foreign liquor manufactured by Beam Global Spirits and Wine (India) Pvt. Ltd., which has bottling plant located at Dhar (MP) and the liquor was to be sold at Vijaya Sarthy Sales Corporation, South Boulevard, Puducherry, under valid import license. Copies of permit for import of intoxicants issued by Deputy Commissioner of Excise, Puducherry and Madhya Pradesh Excise Department for transport to cover the consignment are placed on record.

4. Petitioner filed application before the trial Court under section 457 of the Code of Criminal Procedure, for release of liquor consignment as petitioner needs to deliver

the said stock to Vijaya Sarthy Sales Corporation, Puducherry. Respondent opposed the application. Learned Judicial Magistrate, First Class at Gangapur, allowed the application and ordered to release the seized liquor boxes in favour of petitioner by accepting *Supurtnama* of Rs.36,00,000/- and by imposing following conditions:-

- “(a) The applicant shall not change the colour or nature of the liquor bottles.*
- (b) The applicant shall not sale the seized liquor bottles or utilize or handover the same by creating third party interest.*
- (c) As and when required, the applicant shall produce the liquor boxes before the Court.”*

5. Being aggrieved by the conditions (a), (b) and (c), petitioner challenged the order in criminal revision application, which is dismissed by the Sessions Court.

6. Heard learned advocate for petitioner and learned APP for Respondent – State, assisted by Police Sub-Inspector Ganesh Suresh Unde, D-1 Division, Excise Department. Perused the record.

7. Indisputably, petitioner had all requisite transit passes and permits issued by Excise Department of Madhya Pradesh State for transportation of liquor consignment to

Pudducherry. According to petitioner, inadvertently, his driver has failed to obtain transit permit of Maharashtra State for transporting consignment through the State. Truck is already released by the trial Court, however, while releasing the liquor, onerous conditions are imposed by the trial Court, which are required to be set aside.

8. Learned APP, on the other hand, supported the impugned order.

9. Perusal of record indicates that petitioner had all the necessary permissions, passes¹¹, permits, etc. for transportation of liquor consignment from Madhya Pradesh to Puducherry. The only lapse committed by the driver of petitioner, who is made accused in the present crime is that, he failed to obtain transit permit for passing through the State of Maharashtra.

10. In ***Sunderbhai Ambalal Desai Vs. State of Gujrat, (2002) 10 SCC, 283***, the Apex Court has held:

"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."

11. Applying the aforesaid ratio to the facts of the present case, the trial Court is justified in allowing the application filed by petitioner by imposing a condition that petitioner should execute *Supurtnama* of Rs.36,00,000/-. However, conditions (a), (b) and (c) imposed by the Trial Court are apparently onerous and unreasonable. Petitioner is not the owner of liquor consignment and petitioner is bound to deliver the said consignment to Pudducherry. Petitioner has undertaken not to dispute the quantity of liquor stock. Already, at the time of seizure of the said stock, panchanama is prepared, wherein the quantity is recorded. At the time of releasing the said liquor stock in favour of petitioner, indemnity bond can be obtained from petitioner that is sufficient safeguard and conditions (a), (b) and (c) imposed by the trial Court cannot be sustained. Hence, the following order.

ORDER

- (i) Writ Petition is allowed.
- (ii) Impugned order dated 26.12.2023 passed by learned Additional Sessions Judge, Vaijapur, in Criminal Revision Application No.04 of 2024, is hereby quashed and set aside.
- (iii) Order dated 26.12.2023 passed by learned Judicial Magistrate, First Class, Gangapur, in Criminal M.A. No.418 of 2023, is hereby

6

confirmed by deleting conditions (अ), (ब) and (क).

Rule is made absolute in the above terms. No order as to costs.

**[NITIN B. SURYAWANSHI]
JUDGE**