



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 2339 OF 2021

Rajeshwar Vaijnathrao Buke

....Applicant

Versus

1. The State of Maharashtra

2. N.T. Gunale

....Respondents

....

Advocate for Applicant : Mr. R.R. Deshpande

i/b. Ms. Priyanka R. Deshpande

APP for Respondents : Mr. K.N. Lokhande

...

**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

DATE : 05 MARCH 2024

FINAL ORDER (PER : SHAILESH P. BRAHME, J.) :

1. Heard both the sides finally at the admission stage.
2. Applicant is seeking quashment of FIR in C.R. No. 21 of 2021 registered with State Excise Inspector, Latur, for the offences punishable under Section 65 (c) (d), 70, 72, 83 and 90 of Maharashtra Prohibition Act, 1949 (hereinafter referred to as 'the Act' for the sake of brevity and convenience), and consequential proceeding RCC No. 285 of 2021 pending before Judicial Magistrate First Class, Ausa, District Latur.

3. Respondent no. 2 lodged report with State Exercise Inspector, Latur, that a secret information of illegal transportation of molasses from Gondri, Taluka Ausa, District Latur, was received. Accordingly, a squad was formed and a tempo bearing No. MH – 13 CU 5803 was apprehended in which huge quantity of molasses was found being transported illegally. Contraband was seized and part of it was referred for chemical analysis. Approximately, 11 metric ton of molasses was seized.

4. It is further case of the respondents that on further enquiry it was found that molasses was being transported from Saibaba Sugar Factory, Gondri, Taluka Ausa, for the purpose of manufacturing country liquor. Investigation was completed and charge-sheet was filed against seven persons including applicant. It was transpired that the applicant is the Chairman of concerned Sugar Factory. RCC No. 285 of 2021 is registered against applicant and others.

5. Learned counsel for the applicant Mr. Deshpande submits that there is absolutely no allegation against applicant in entire charge-sheet. Except the fact that he is the Chairman of the Sugar Factory no incriminating role has been attributed to him. He would submit that statements of the co-accused are recorded which are totally inadmissible

namely Altaf Shikar, Vajir Maulsab, Nitin Goroba, Mahesh Jairam and Navnath Nagnath.

6. He further submits that no offence can be made out against the applicant. Sugar Factory of which he is Chairman is a registered company. It has not been made accused. It would be at the most breach of the Rules. The charge-sheet does not attribute any collusion of other accused with the applicant. On these counts, he would pray to quash the proceedings. A reliance is placed on judgment rendered by Division Bench of this Court in the matter of *Brijesh Kanubhai Patel and others Versus State of Maharashtra and another*, in Criminal Application No. 498 of 2021.

7. Per contra, learned APP submits that there is cogent material against applicant collected during course of investigation. The statements recorded during the course of investigation other than the statements of the accused persons indicate involvement of the applicant. Unless there is collusion between the applicant and other accused, it would not have been possible to take out contraband from the factory. He prayed that the application be rejected.

8. We have considered rival submissions. First Information Report does not refer the applicant's name. There are no allegations

against him. He is impleaded being Chairman of the Sugar Factory from which the contraband allegedly proceeded. When the vehicle was apprehended, applicant was not present.

9. It is a matter of record that Saibaba Sugar Limited Factory has requisite licence for production of molasses and its sale. Sugar Factory is under obligation to follow Bombay Molasses Rules of 1955. For the breach of the rules, a different action is contemplated.

10. We have gone through the papers of investigation. We do not find that any incriminating role of the applicant for transporting the molasses. Neither there is any material to indicate collusion of the applicant with other accused persons. We find merit in the submissions of the learned counsel for the applicant, in this regard.

11. Having considered entire papers of investigation, we do not find that the essential ingredients of offence under Section 55 (c) (d), exist in the case in hand. By no stretch of imagination can it be said that, *prima facie*, case is made out against applicant for the offences under Sections 70, 72, 82 and 90 of the Maharashtra Prohibition Act. The respondents have recorded statements of the co-accused and also that of applicant which are inadmissible in evidence at any stage of the proceedings. There is no independent evidence against the applicant.

12. It is tried to be submitted by the respondent that as the molasses was being manufactured in the Sugar Factory of which applicant is office bearer, he would be liable for criminal action. It has not been pointed out by the respondents that any endeavour is made to ascertain that contraband was actually manufactured in the Sugar Factory and it was transported at the instructions of the applicant. In the absence of any material to demonstrate control of applicant over seized contraband, particularly its movement, we are not inclined to accept the submissions of the learned APP.

13. Learned counsel seeks to rely on the judgment of the Division Bench of High Court, Bench at Aurangabad, in the matter of *Brijesh Kanubhai Patel and others* (supra) to buttress that there can be no vicarious liabilities in the criminal cases. In that matter, a survey of various judgments on the point was taken from paragraph nos. 19 to 23. It can be culled down that in the absence of any provision under the statute, a Director of the Company or any employee cannot be held to be vicariously liable for any offence committed by the company. In the present case also there is no material to make out a case of any deliberate act or abetment on the part of the applicant. We are of the considered view that further prosecution of the proceedings would be an exercise to futility. We, therefore, pass following order :

ORDER

- i. Criminal Application is allowed in terms of prayer clauses 'B' and 'C' to the extent of present applicant.
- ii. FIR bearing C.R. No. 21 of 2021 registered with State Excise Inspector, Latur, for the offences punishable under Sections 65 (c) (d), 70, 72, 83 and 90 of the Act and consequential proceedings RCC No. 285 of 2021 pending before Judicial Magistrate First Class, Ausa, District Latur, are quashed and set aside to the extent of present applicant.

[SHAILESH P. BRAHME, J.]**[MANGESH S. PATIL, J.]**