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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CRL.M.C. 3157/2023 & CRL.M.A. 11811/2023

BHARAT SAWHNEY .....Petitioner

Through: Mr. Hrishikesh Baruah, Mr. Anurag Mishra and Mr. Utkarsh Dwivedi, Advocates

versus

STATE (NCT OF DELHI) .....Respondent

Through: Mr. Satish Kumar, APP for the State along with SI Sanjay Dahiya, PS Mehrauli

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

O R D E R

% **19.12.2024**

1. The instant petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter as the "Code") [now under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter as the "BNSS")] has been filed on behalf of the petitioner seeking quashing of the FIR bearing no. 305/2013 registered at Police Station – Mehrauli for the offences punishable under Sections 33 and 38 of the Delhi Excise Act, 2009 and chargesheet dated 24th March, 2015 filed by the concerned police authorities in Criminal Case bearing no. 2035699 of 2016 pending before the learned Metropolitan Magistrate-05, Saket district Court, Delhi and all consequential proceedings emanating therefrom.

2. The brief facts of the case are that on 16th May, 2023, at around 9:30 PM, birthday of petitioner's son was being celebrated in his farm. It is stated

in the aforesaid FIR, that liquor was being served in the said party. One Manoj Kumar, an Excise Intelligence Bureau officer, raided the petitioner's farm and asked the bar tender to produce the P-10 licence, which he failed to produce. It was further stated the bottles of alcohol were allegedly seized by the investigating agency. Accordingly, a complaint was filed to the SHO, Police Station – Mehrauli and based on the same, the aforesaid FIR was registered. Thereafter, the petitioner was duly arrested and was later enlarged on bail by the learned Metropolitan Magistrate on 17th May, 2013.

3. Learned Counsel for the Petitioner submitted that there has been no infringement of Delhi Excise Rules, 2010. It is further submitted that the petitioner resides in a joint household with his father (now deceased), brother and wife, who are all above the age of 25 years (including the Petitioner herein).

4. Relying on Rule 20(a) of the said Rules, learned counsel for the petitioner submitted that the maximum limit for individual possession of liquor for Indian Liquor and Foreign Liquor (whisky rum, gin, vodka and brandy) is nine litres, and for wine, beer, liqueur, cider and alcopop is eighteen litres. It is further submitted that as per the prosecution, 5.5 litres of whiskey and 47.45 litres of Beer and Alcopop were allegedly seized from the petitioner's house.

5. It is submitted that the amount of liquor recovered falls within the maximum permissible limit as per Rule 20 of the Delhi Excise Rules, 2010, and that offence under Section 33 of the Delhi Excise Act, 2009, is not made out.

6. Mr. Satish Kumar, learned APP appearing for the State vehemently opposed the instant petition and submitted that the liquor recovered from the

petitioner is huge in quantity, thereby meeting the criteria laid down under Sections 33 and 38 of the Delhi Excise Act, 2009.

7. At this juncture, it is pertinent to note that Rule 20 of the Delhi Excise Rules, 2010 stipulates the maximum limit for retail sale and individual possession of liquor. Violation of this Rule entails an offence under Section 33 of the Delhi Excise Act, 2009, which is punishable with imprisonment for a maximum term of three years and a fine which is not less than Rs. 50,000/-, but may extend to Rs. 1,00,000/-. The relevant portion of Rule 20 of the Delhi Excise Rules, 2010, applicable to the instant case has been reproduced as under:

> *"**20**. Maximum limit for retail sale and individual possession of liquor*
>
> *The maximum quantities of intoxicants specified below, which for the purposes of the Act, may be sold by retail and possessed exclusively, by an individual not below the age of twenty five years in Delhi, shall be as follows:—*
>
> *(1) Indian Liquor and Foreign Liquor*

(a)	*(i) Indian Liquor and Foreign Liquor (Whisky rum, gin, vodka, and brandy), except wine liqueur, beer, cider and alcopop;*	*nine litres;*
	ii) Wine, beer, liqueur, cider and alcopop;	*eighteen litres;*
	(iii) Indian Liquor or Foreign Liquor;	*one litre while entering into Delhi from other States;*

	(iv) Foreign Liquor	*Two litres while entering into Delhi from other countries*

……………………….."

8. A reading of the aforementioned rule indicates that an *individual* of above 25 years of age can possess 9 litres of whisky, vodka, gin and rum, and 18 litres of beer, wine and alcopop. In the instant case, 5.5 litres of whiskey and 47.45 litres of Beer and Alcopop were recovered from the petitioner's house, which is a joint household consisting of 4 adults above the age of 25 years. Therefore, as per Rule 20, the permissible limit for possession of liquor at the Petitioner's house would be 36 litres of whisly, vodka, gin and rum, and 72 litres of beer, wine and alcopop. Therefore, there is no *prima facie* violation of the provisions under Delhi Excise Act, 2009 by the petitioner.

9. Quashing of criminal proceedings under Section 482 Cr.P.C. is called for in a case where the complaint does not disclose any offence, or is frivolous, vexatious, or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to exercise its inherent powers and quash the same. It is not necessary that a meticulous analysis of the case should be done before the trial to find out whether the case would end in conviction or acquittal. If it appears on a reading of the complaint and consideration of the allegations therein, in the light of the statement made on oath that the ingredients of the offence are disclosed, there would be no justification for the High Court to interfere. The same was observed in the

case of ***Kamal Shivaji Pokarnekar v. State of Maharashtra and Ors.*****, (2019) 14 SCC 350**.

10. Therefore, this Court is of the opinion that the offence under Section 33 and 38 of the Delhi Excise Act, 2009, as alleged in the aforesaid FIR against the petitioner, is not made out from the facts and circumstances of the instant case, and that the quantity of liquor that has been seized from the residence of the Petitioner falls within the maximum permissible limit that has been specified under Rule 20 of the Delhi Excise Rules, 2010.

11. Therefore, this Court deems it fit to exercise its inherent power under Section 482 Cr.P.C. and accordingly, the impugned FIR No. 305/2013 registered at Police Station – Mehrauli for the offences punishable under Sections 33 and 38 of the Delhi Excise Act, 2009 and chargesheet dated 24th March, 2015 filed by the concerned police authorities in Criminal Case bearing no. 2035699 of 2016 pending before the learned Metropolitan Magistrate-05, Saket district Court, Delhi and all consequential proceedings emanating therefrom are quashed.

12. The petition alongwith pending applications, if any, stand disposed of.

CHANDRA DHARI SINGH, J

DECEMBER 19, 2024
Rk/mk

Click here to check corrigendum, if any