$~31

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

\+ CRL.M.C. 4194/2022 & CRL.M.A. 17228/2022

CHANDER SHEKHAR JHA .... Petitioner

Through: Mr.Karan Minocha, Mr.Luv Manan, Advs.

versus

STATE OF DELHI AND ANR. ..... Respondents

Through: Mr.Shoaib Haider, APP with SI Kishore Prasad.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

O R D E R

% **13.02.2024**

1. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') seeking quashing of the FIR No.0139/2019 registered with Police Station: Defence Colony, South-District, Delhi, under Section 33 of the Delhi Excise Act, 2009 (hereinafter referred to as the 'Excise Act'), on merits.
2. It is the case of the prosecution that on 30.06.2019, during the search and seizure action at the premises of the petitioner, a total of 53 sealed bottles of liquor were found. The total quantity of the liquor found was 39.45 litres consisting of Indian and Foreign Liquor, while 3.95 litres of Wine.
3. The learned counsel for the petitioner, placing reliance on the judgment dated 28.02.2022 of this Court passed in W.P.(Crl.) No.626/2021, titled ***Avijeet Saluja v. State of NCT of Delhi***, submits that as the liquor allegedly found from the premises of

the petitioner was below the limits prescribed under Rule 20 of the Delhi Excise Rules, 2010, charge cannot be framed against the petitioner and the subject FIR and the charge sheet are liable to be quashed.

4. The learned APP, on the other hand, submits that a total of 53 bottles have been recovered from the premises of the petitioner and therefore, the charge sheet has rightly been filed against the petitioner.

5. I have considered the submissions made by the learned counsels for the parties.

6. The details of the liquor which has been allegedly recovered from the premises of the petitioner have been mentioned in the FIR and in the charge sheet. A total quantity of 39.45 litres of Indian liquor and foreign liquor, and 3.95 litres of Wine, Beer, Cider, Alcopop, was found, which is within the permissible limits.

7. In similar circumstances, in ***Avijeet Saluja*** (supra), a Co-ordinate Bench of this Court has quashed the FIR, exercising its powers under Section 482 of the Cr.P.C., by observing as under:

> *"7. 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 [See Kamal Shivaji Pokarnekar v. State of Maharashtra and Ors., (2019) 14 SCC 350].

8. This Court is of the opinion that the offence under Section 33 of the Delhi Excise Act, 2009, that has been alleged 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. This Court, therefore, deems it fit to exercise its inherent power under Section 482 Cr.P.C. to quash the impugned FIR No. 467/2020 dated 18.11.2020 registered at Police Station Hauz Khas for offence under Section 33 of the Delhi Excise Act, 2009. Resultantly, FIR No. 467/2020 dated 18.11.2020 registered at Police Station Hauz Khas for offence under Section 33 of the Delhi Excise Act, 2009 and the proceedings emanating therefrom are hereby quashed."

8. In view of the above, the FIR No.0139/2019 registered with Police Station: Defence Colony, South-District, Delhi, under Section 33 of the Excise Act and the consequent charge sheet/proceedings emanating therefrom are hereby quashed.

9. The petition is allowed in the above terms. The pending application also is disposed of.

NAVIN CHAWLA, J

FEBRUARY 13, 2024
RN/ss

<u>Click here to check corrigendum, if any</u>