



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

48 CRIMINAL APPLICATION NO.1076 OF 2024

Yashwant Gopinath Kute,
Age 34 yrs., Occ. Service,
R/o Yashwantnagar, Khanapur Phata,
Parbhani, Tq. & Dist. Parbhani.

... Applicant

... Versus ...

1 The State of Maharashtra
Through Police Inspector,
Nanalpeth Police Station,
Parbhani, Tq. & Dist. Parbhani.

2 Sugriv Munjabhau Thombre,
Age 53 yrs., Occ. Service as Police,
R/o Nanalpeth Police Station,
Parbhani, Tq. & Dist. Parbhani.

... Respondents

...

Mr. V.U. Pawar, Advocate for applicant

Mr. N.R. Dayama, APP for respondent No.1

...

CORAM : SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.

DATE : 04th MARCH, 2025

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present application has been filed under Section 482 of the Code of Criminal Procedure for quashing proceedings in Summary Criminal Case No.45/2024 pending before Judicial Magistrate First Class, Parbhani arising out of First Information Report vide Crime No.488/2023 dated 08.11.2023 registered with Nanalpeth Police Station, Parbhani, Tq. & Dist. Parbhani, for the offence punishable under Section 85(1) of the Maharashtra Prohibition Act, 1949.

2 Heard learned Advocate Mr. V.U. Pawar for applicant and learned APP Mr. N.R. Dayama for respondent No.1. In order to cut short, it can be said that they have argued in support of their respective contentions.

3 Learned Advocate for applicants relies on the decision in **Jagdish Vasudeo Lanjeshwar vs. State of Maharashtra** in Criminal Application (APL) No.353 of 2020 decided by this Court (Nagpur Bench) on 11.09.2020.

4 Perusal of First Information Report would show that it has been lodged by Police Head Constable Mr. Sugriv Thombre attached to Nanalpeth Police Station, Parbhani. He was on duty at Civil Hospital Police Chowky, Parbhani around 00.05 a.m. on 08.11.2023. He was informed that a person has come in drunken condition in Ward No.10 and is creating chaos. They

found present applicant sitting on cot of patient Shyamrao Kashinath Awargand and he was under influence of liquor. After inquiry, he gave his name and stated that he is suspended Police Constable. His medical check up was done and it was opined by Medical Officer that he was under the influence of liquor. Hence, First Information Report came to be lodged. Important point to be noted that perusal of Medico Legal Certificate would show that usual observations have been made in respect of pupils and smell of liquor and irrelevant talk. It is then stated that Medical Officer on duty found him to be under influence of liquor and for tests samples of blood as well as urine were taken. When it was found that report in respect of the same are not produced, we had called upon learned APP to get clarification from Police Inspector, Nanalpeth Police Station. At that time it has been informed that as applicant had not cooperated the Medical Officer, samples were not at all taken. This is against Medico Legal Certificate, where it is specifically stated that such samples were taken. Now, only on the basis of statements, it cannot be said that applicant was under influence of liquor. The coordinate Bench in **Jagdish Lanjeshwar** (supra) had held that -

“From the plain reading of sub section (1), merely because a person was under the influence of liquor at the relevant time is not sufficient to attract the penal provision. Secondly, even a person charged was under the influence of liquor and was found at public a place or street or thoroughfare, still he cannot be charged for the offence punishable

under Section 85 of the Act. To charge a person under Section 85 of the Act, a person must be under the influence of liquor at a public place or street or thoroughfare and there he behaves in “disorderly manner under the influence of liquor”. Thus, if all these ingredients are found collectively then only it may be said that the person has committed an offence punishable under Section 85(1) of the Act.”

Therefore, it would be unjust to ask applicant to face the trial.
Hence, following order.

ORDER

- i) Criminal Application stands allowed.
- ii) The proceedings in Summary Criminal Case No.45/2024 pending before Judicial Magistrate First Class, Parbhani arising out of First Information Report vide Crime No.488/2023 dated 08.11.2023 registered with Nanalpeth Police Station, Parbhani, Tq. & Dist. Parbhani, for the offence punishable under Section 85(1) of the Maharashtra Prohibition Act, 1949, stands quashed and set aside as against applicant **Yashwant Gopinath Kute**.

(SANJAY A. DESHMUKH, J.)

(SMT. VIBHA KANKANWADI, J.)

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