



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

40 CRIMINAL WRIT PETITION NO. 1552 OF 2024

**LAXMAN RAKHAMAJI BHOGADE AND OTHERS
VERSUS**

THE STATE OF MAHARASHTRA AND ANOTHER

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Ms Manjushri V. Narwade, Advocate for the Petitioners

Mr. K. K. Naik, APP for the Respondents – State

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CORAM : Y. G. KHOBRAGADE, J.

DATE : 20.01.2025

PER COURT :-

1. Heard the learned counsel for the Petitioners and the learned APP for the Respondent – State.

2. By the present Petition under Article 227 of the Constitution of India, the Petitioners takes exception to the order dated 25.06.2024 passed by the learned J.M.F.C. Court No.3, Ashti, District Beed, below Exh.88 in SCC No.600 of 2014, whereby the Application for discharge filed by the Petitioners came to be rejected.

3. On face of record it appears that, on 10.10.2013, the informant Madhukar Sakharam Kanthale, lodged a report with Ambhora Police Station Tq. Ashti, District Beed, alleging about receiving the information from the reliable sources that, the Petitioners/accused are manufacturing illicit liquor. Therefore, on 10.10.2013 at about 7.00 hours, the raid was conducted and apprehended the present Petitioners/accused along with the substantial material as described in the oral report. The Investigating Officer drawn seizure panchanama and recorded statements of the witnesses. The collected samples were sent for the Chemical Analysis for examination. After investigation is over, a charge-sheet came to be filed against the present Petitioners for the offences punishable under Sections 65(F), 81, 82 and 83 of the Bombay Prohibition Act read with Section 328 of I.P.C. The said final report registered as R.C.C. No.600 of 2014.

4. On 24.11.2017, the learned Judicial Magistrate First Class passed an order below Exh.1 in SCC No.600 of 2014 and stopped the proceedings under Section 258 of Cr.PC., because the witnesses as well as the accused/Petitioners were remain absent since long. Thereafter, on 24.10.2018, the prosecution filed an application

Exh.35 and prayed for reopening of the trial on ground that the accused and witnesses are traced out. The accused/petitioners are apprehended.

5. On 24.10.2018, the learned Judicial Magistrate First Class, Ashti, passed an order and restored the trial against the present Petitioners. Thereafter, the Petitioners/accused filed Exh.56 an Application for discharge on the ground that, previously vide order dated 24.11.2017 they are already discharged by taking recourse of Section 258 of Cr.PC. Therefore, they can not be tried for offences for which they already discharged.

6. On face of record it appears that, after the Petitioners are arrested on execution of Non Bailable Warrant, they are released on bail.

7. The learned counsel for the Petitioner canvassed that, since the Petitioners are already discharged under Section 258 of Cr.PC., therefore, trial against the present Petitioners/accused cannot be reopened and they cannot be tried. Therefore, the Petitioners are entitled for discharge.

8. Needless to say that the powers under Section 258 of Cr.P.C. can be exercised by the learned Judicial Magistrate without pronouncing any judgment. Section 258 of Cr.P.C. reads as under:-

“258. Power to stop proceedings in certain cases. -- In any summons – case instituted otherwise than upon complaint, a Magistrate of the first class or, with the previous sanction of the Chief Judicial Magistrate, any other Judicial Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment and where such stoppage of proceedings is made after the evidence of the principal witnesses has been recorded, pronounce a judgment of acquittal, and in any other case, release the accused, and such release shall have the effect of discharge.”

9. Since the accused were remained absconding after they released on bail, therefore, by taking recourse of powers confirmed under Section 258 of Cr.P.C., the learned Judicial Magistrate First Class, had stopped the said proceeding, which does not amount about discharged of the petitioners/accused on merit. The Petitioners have not denied that, initially they were arrested in connection with offences punishable under Sections 65(F), 81, 82 and 83 of the Bombay Prohibition Act read with Section 328 of I.P.C.. Further, the Petitioner have not denied that, they are apprehended on execution of Non Bailable Warrant and they were not absconding. Since, the present Petitioners/accused were not discharged under Section 227 of Cr.P.C., but the proceeding against these Petitioners were stopped

under Sec. 258 of Cri.P.C.. Therefore, the Petitioners can not say that, earlier they are discharged for the offences punishable under Sections 65(F), 81, 82 and 83 of the Bombay Prohibition Act read with Section 328 of I.P.C. in SCC 600 of 2014 and no charge can be framed against them. Therefore, I do not find any substance in the present Petition. Therefore, the Criminal Writ Petition is hereby dismissed. No order as to cost.

[Y. G. KHOBRAGADE, J.]

SMS