



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.3586 OF 2023

Vishal s/o Dattatray Palve,
Age-32 years, Occu:Business,
R/o-Vidya Nagar, Shevgaon,
Taluka-Pathardi, District-Ahmednagar

...APPLICANT

VERSUS

- 1) The State of Maharashtra,
Through State Excise Department,
Udgir, District-Latur,
- 2) J.R. Pawar,
Age-36 years, Occu:Service
As a Constable, State Excise,
Udgir-A, District-Latur.

...RESPONDENTS

WITH

CRIMINAL APPLICATION NO.3589 OF 2023

- 1) Vishal s/o Dattatray Palve,
Age-32 years, Occu:Business,
R/o-Vidya Nagar, Shevgaon,
Taluka-Pathardi, District-Ahmednagar,
- 2) Ujwala W/o Nandkumar Munde,
Age-37 years, Occu:Household,
R/o-Shriram Colony, Datta Nagar,
Shevgaon, Taluka-Pathardi,
District-Ahmednagar.

...APPLICANTS

VERSUS

- 1) The State of Maharashtra,
Through State Excise Department,
Udgir, District-Latur,
- 2) J.R. Pawar,
Age-36 years, Occu:Service
As a Constable, State Excise,
Udgir-A, District-Latur.

...RESPONDENTS

...
Mr. Amol Chate Advocate h/f. Mr. A.K. Tiwari Advocate for
Applicants in both Applications.
Mr. A.R. Kale, Additional P.P. for Respondent Nos.1 and 2 in
both Applications.

...
**CORAM: SMT. VIBHA KANKANWADI AND
SANJAY A. DESHMUKH, JJ.**

DATE : 25th JUNE, 2025

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Criminal Application No.3586 of 2023 has been filed for quashing the proceedings in R.C.C. No.115 of 2023 pending before the learned Judicial Magistrate First Class, Chakur, District-Latur, arising out of the First Information Report (for short "the FIR") vide Crime No. 64 of 2022, registered with State Excise Department by the Office of Inspector of State Excise, Udgir-A, District Latur, on 5th April 2022, for the offence

punishable under Sections 65(f), 81, 83, 86, 90 of the Maharashtra Prohibition Act.

2. Criminal Application No.3589 of 2023 has been filed for quashing the proceedings in R.C.C. No.15 of 2023, pending before the learned Judicial Magistrate First Class, Ahmedpur, District-Latur, arising out of the FIR vide Crime No. 65 of 2022, registered with State Excise Department by the Office of Inspector of State Excise, Udgir-A, District Latur, on 5th April 2022, for the offence punishable under Sections 65(f), 81, 83, 86, 90 of the Maharashtra Prohibition Act.

3. Since both the Applications arises out of the same matter, they are taken up together.

4. Heard learned Advocate Mr. Chate holding for learned Advocate Mr. Tiwari for the applicants and learned APP Mr. Kale for respondents.

5. Learned Advocate appearing for the applicants in both the Applications has taken us through the charge-sheet including the FIR and submits that the contents of the FIR will not disclose

even prima facie offence that is committed as per the sections stated in the FIR and the charge-sheet. In both the matters, what has been seized is the material in the form of caps, mono-cartoons, labels, folders and empty bottles etc. Nobody was present wherein it can be said that anybody would have been affected due to the material. The applicant Vishal Palve was holding FL-I license in partnership at Maliwadi, Taluka-Ahmedpur. The partnership firm was M/s. Rishikesh Liquors. One Shriniwas Rayalu contacted the applicant Vishal in June 2021 and told him that he want to shift their Bio Liquor Distillery at Solapur and wants to store scrap material in the godown of Rishikesh Liquors. In December 2021 the entire liquor stock was sold. As the business was in loss from 2022-2023, the FL-I License was not renewed. The copies of E-way bill and tax invoices were provided by Shriniwas Rayalu. The premises were belonging to one Rahul Ghatol. Therefore, the ingredients of Section 65(f) of the Maharashtra Prohibition Act are not at all attracted. There was no question of conspiracy. The articles were transported from Goa to Latur District and there was E-way bill and tax invoice was also there and costing of the said material was Rs.10,22,613/-. The applicant has paid the Goods and Services Tax (GST) for the same, therefore, there was no question of

illegality involved in the same. The applicants Vishal Palve and Ujwala Munde are residents of Pathardi Taluka, Ahmednagar District, who were one of the partners in Rishikesh Liquors. They have no knowledge about what was stored in the godown.

6. Learned APP strongly opposes the Applications and submits that the articles worth Rs.24,76,869/- have been seized from the spot. The material was to be used then for manufacturing illicit liquor or was to be mis-branded and therefore, the trial is necessary.

7. Section 65 of the Maharashtra Prohibition Act provides for penalty for illegal import etc. of intoxicant or hemp. Any person in contravention of the provisions of the Act or any rule, regulation or order made or of any license, pass, permit or authorisation granted thereunder, [for offence under subsection (f)], uses, keeps or has in his possession any materials, still utensils, implements or apparatus for the purpose of manufacturing any intoxicant (other than opium), would be made punishable, which may be extended to five years. Now, if we consider the contents of both the FIR as well as the spot panchnama, it can be seen that there was absolutely no material lying there which can be used for the purpose of manufacturing

any intoxicant. What has been found is the caps of red and green colour having different brands, mono-cartoons single piece units, labels of different brands, empty cartoon folders and two types of glass bottles. Without there being any manufacturing material, it cannot be stated that the seized articles would have been used for manufacturing of any intoxicant. Even the word "uses" presupposes some substance in the material seized, because the Legislature has not intended it to be used as "could be used or capable of using". At the most the material that has been seized could have been used in storing the intoxicant, which is not covered in Section 65(f) of the Maharashtra Prohibition Act.

8. Section 81 of the Maharashtra Prohibition Act deals with penalty for attempts or abetment. Here the main offence is also not made out and therefore, the question of attempt or abetment cannot get attracted. Section 83 of the Act prescribes penalty of conspiracy. Here it is to be noted that in Criminal Application No.3586 of 2023 it has been stated in the FIR that the raiding party has stated that the information was received that the illicit liquor is being manufactured in the closed premises behind theater which is behind Mayuri Bar which was

closed. In Criminal Application No.3589 of 2023 it has been stated in the FIR that the raiding party has stated that the information was received that the illicit liquor is being manufactured in the closed premises of Rishikesh Liquors. Two panchas and raiding party went at the respective spots. Nobody was present there and in fact they had broke open the lock and entered the premises. They could then found out the said material at that place. Now, there was no question of conspiracy and it was between whom has also not been clarified by the prosecution.

9. Section 86 of the Maharashtra Prohibition Act deals with for penalty for allowing any premises to be used for purpose of committing an offence under the Act. However, As aforesaid, no offence is being transpired. Even Section 90 of the Maharashtra Prohibition Act has been invoked, which is in fact the residuary provision, which provides penalty for offences not otherwise provided for. Basically it requires that there has to be an offence. Here, mere recovery of those articles from the spot will not be a presumption that the said material was used for any illicit activities. Further, the E-way bills are forming part of the charge-sheet. There appears to be no investigation in respect of the said

E-way bills. When G.S.T. is paid for the said material, it cannot be said that there is any illegality in procuring the said material or it cannot be stated that the said material was to be used for committing any offence and therefore, the case is made out for quashing the FIR and the proceedings. Hence, we pass following order:-

ORDER

(I) Both the Applications stand allowed.

(II) The proceedings in R.C.C. No.115 of 2023 pending before the learned Judicial Magistrate First Class, Chakur, District-Latur, arising out of the First Information Report vide Crime No. 64 of 2022, registered with State Excise Department by the Office of Inspector of State Excise, Udgir-A, District Latur, on 5th April 2022, for the offence punishable under Sections 65(f), 81, 83, 86, 90 of the Maharashtra Prohibition Act, stands quashed and set aside as against applicant in Criminal Application No.3586 of 2023 i.e. - Vishal S/o Dattatraya Palve.

(III) The proceedings in R.C.C. No.15 of 2023, pending before the learned Judicial Magistrate First Class, Ahmedpur, District-Latur, arising out of the First Information Report vide Crime No. 65 of

2022, registered with State Excise Department by the Office of Inspector of State Excise, Udgir-A, District Latur, on 5th April 2022, for the offence punishable under Sections 65(f), 81, 83, 86, 90 of the Maharashtra Prohibition Act, stands quashed and set aside as against the applicants in Criminal Application No.3589 of 2023, i.e. - 1) Vishal s/o Dattatray Palve and 2) Ujwala W/o Nandkumar Munde.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/JULY25