



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL REVISION APPLICATION NO. 229 OF 2022

APPLICANT

Kamlesh Vitthal Thombre,
Aged about 45 years, occu: Pan Shop,
R/o Mahadeo Mandir, Bapupeth
Ward, Chandrapur. (Presently in the
Prison at Chandrapur)

-VERSUS-

NON-APPLICANT

The State of Maharashtra, through
Police Station officer, Police Station,
Chandrapur, Tq. and District
Chandrapur.

Mr. Nalin Majithia, counsel (appointed) for applicant.
Mrs. Sneha Dhote, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATE : 26/02/2025

ORAL JUDGMENT :

1. Heard.
2. **Admit.** Heard finally with the consent of learned
counsels appearing for the parties.

3. The applicant is assailing the judgment dated 10/05/2018 by the learned Judicial Magistrate, First Class (Court No. 7), Chandrapur in S.C.C. No. 2617/2015, whereby the applicant is convicted for the offence punishable under Section 65(e) and sentenced to suffer rigorous imprisonment for three years and to pay a fine of Rs. 25,000/-. In default of payment of fine, he shall further suffer rigorous imprisonment for one month.

4. The applicant has challenged the judgment and conviction in Criminal Appeal No. 79/2018, which was dismissed by the learned Sessions Judge, Chandrapur, vide judgment dated 29/08/2019.

5. Being aggrieved and dissatisfied with the concurrent finding of both the Courts, the present revision is preferred by the applicant, who is the original accused.

6. The prosecution has come with the case that on 02/09/2015, at about 7 hours at Mahadeo Mandir, Babupeth Ward Chandrapur, Taluka and District Chandrapur, the applicant was found in possession of two bottles containing 180 ml each of "Officers Choice" foreign liquor worth Rs. 300/- in his pant without having any pass or permit for selling purpose in

contravention of the provisions of the Bombay Prohibition Act, 1959, and thereby committed an offence punishable under Section 65(e) of the Bombay Prohibition Act, 1959. The charge is framed vide Exhibit No. 12. In support of the charge, the prosecution has examined in all five witnesses.

7. The Prosecution Witness No. 1, Ajay Keshavrao Mankar, is the Police Officer, who was serving as Assistant Police Inspector. At the relevant time, as per his evidence, when he was on patrolling duty, he received the secret information that one person was found selling the liquor bottles secretly; therefore, he, along with the panchas and other raiding staff member, visited the said place and accosted the said person, who is the accused, and from his possession, two bottles of 180 ml were seized in presence of panchas.

His cross-examination shows that the locality where the accused was found is a dense residential locality; he has not issued any notice to the panchas before they are called. He admits that he has deposited the said Muddemal with the Muddemal Clerk, and he is not aware where the said Muddemal Clerk has kept the said Muddemal. He specifically admitted that when he

reached the spot of the incident, at the relevant time, there was a darkness.

8. The Prosecution Witness No. 2, Rajkumar Gopal Nandwanshi, has acted as a panch, who stated that in his presence police have seized the liquor bottles from the possession of the applicant. His cross-examination shows that he is a habitual panchas, and whenever he is called, he makes himself available for the same purpose. He is unable to tell when the panchanama was commenced and when it is closed.

9. The Prosecution Witness No. 3, Murlidhar Mahadev Thenge, is another police constable who has carried the said Muddemal to the Chemical Analyzer office. His evidence is to the extent that on 18/09/2015, the Police Officer deputed him to carry the said Muddemal to the Chemical Analyzer office. His cross-examination shows that he is unable to tell where the Muddemal was kept, and in what circumstances, the said Muddemal was kept. He has no documentary evidence to show that he has handed over the duty pass to the Muddemal Clerk.

10. The Prosecution Witness No. 4, Ramdas Nilkanthrao Kore, is also a police official who has carried out some

investigation. His evidence is to the extent that he has collected the invoice to show that Muddemal was forwarded to the Chemical Analyzer Office. His cross-examination also shows that he has obtained the Muddemal from the Muddemal Clerk to forward it to the Chemical Analyzer Office. He is unable to tell when he has collected the said Muddemal and when it was forwarded. He specifically admits that, on Exhibit 20, i.e., outward requisition, wherein outward number is not there. He is also unable to tell the batch number of the said Muddemal, and he has also not issued any acknowledgment regarding the duty pass connected by him.

11. The Prosecution Witness No.5, Raju Keshavrao Waddelwar, is the another investigating officer, who has carried out the part of the investigation. His cross-examination also shows that on 2/9/2015, he did not mention the seizure of the said Muddemal, that Muddemal was seized and sealed, and was intact. He also admitted that there was scoring in column No. 8, where the Muddemal was deposited.

12. Heard learned counsel for the applicant, who submitted that the entire evidence adduced by the prosecution

shows that the prosecution is unable to tell whether the Muddemal was intact since it was seized till it was dispatched for the Chemical Analyzer purpose. The panch witness, who is examined by the prosecution, is also a habitual panch. There are material omissions and contradictions, and the infirmities were not considered by both the Courts while convicting the present applicant. It is submitted that all these infirmities are quite material, and therefore, this is a fit case where even in the limited jurisdiction, the impugned order cannot be sustained.

13. Learned APP strongly opposed the said contention and submitted that the evidence of the prosecution witnesses clearly establishes that the Muddemal was in a sealed and intact condition till it was sent to the Chemical Analysis office. The sample bottle was forwarded to the Chemical Analysis immediately after his seizure. The evidence of the police officials and the panch witness is consistent with the fact that the seizure was made and the incriminating articles were seized from the possession of the present applicant. In view of that, the revision application is devoid of merits and liable to be dismissed.

14. On appreciation of the evidence and considering the

entire document on record, a grievance is rightly made by the learned counsel that the sample bottle was forwarded to the Chemical Analyzer office merely after 15 days, during which period it was lying at the police station. In the midst of the other property, including the articles that were directed to be disposed of. No one from that office is examined, nor is any register produced to show that the Muddemal was intact. In fact, the Muddemal Clerk is not examined to show that the said Muddemal was kept in a condition to protect it from any adulteration.

15. The evidence of the prosecution witnesses nowhere shows that while forwarding the said Muddemal, it was in an intact condition. Even the evidence of Prosecution Witness No. 1 shows that, when the raid was conducted, there was a darkness. Thus, identification of the accused by the panchas is also not there. The evidence of Prosecution Witness Nos. 3, 4, and 5 is also insufficient to ascertain that by following the due procedure, the seizure was made and the bottle was sealed in presence of panchas, and thereafter, the said sealed bottle was kept in a Muddemal room, and the said seal was intact.

16. The evidence of Prosecution Witness No. 2 panch

witness is completely silent to show that the bottles were seized and sealed in his presence. Thus, considering the nature of the evidence, the learned trial Court ought to have consider that this evidence is insufficient to connect the present accused and to prove the charges against him. The Panch witness makes a claim that a panchanama was in his presence, but his evidence is not acceptable. On a cursory perusal of the panchanama, the claim is exposed as it appears from the very manner itself that he has not stated that in his presence the bottle was sealed. No customer or any other person was seen near the accused, and no watch was kept on the activities of the accused. It is also clear that it was dark at that time, and all the details could not be observed even by the member of the raiding party. The said members were at distance, and during which period, the accused was sitting there only. No customer or any other person was sent to verify the fact, and no customer or any other person was also seen near about nor was any watch kept on the activities of the accused to ascertain that he was attempting to sell the said liquor. Under the circumstances, therefore, it is not quite safe to accept this evidence to hold the accused was attempting to sell the said contraband, i.e. liquor. This evidence is also not sufficient to accept that the

accused was in conscious possession of the said liquor bottle.

17. Thus, considering the grievance, which is rightly made by the learned counsel for the applicant, and the sample bottle was forwarded to the Chemical Analyzer merely about 15 days later, there is no evidence that during this period it was kept in a condition that there was no possibility of adulterating the same, or there is no evidence that it was in an intact condition till it was sent to the Chemical Analysis. The person from the office of the concerned police station, who has kept the said Muddemal, is not examined. Even though there is no entry in a forwarding letter to the Chemical Analysis that the bottle was in a sealed condition when it was forwarded. The investigating officer, i.e. prosecution witness No. 5, has specifically admitted that it is not mentioned in the forwarding letter that the seal was intact. The Head Constable is unable to explain the fact that, in what condition the bottle was lying in a Muddemal room. This, therefore, is an additional ground.

18. Having regard to all these circumstances, interference with the judgments of both Courts below is called for. It would be hazardous to record a conviction, and therefore, the impugned

order deserves to be set aside, even in the revisional jurisdiction.

Accordingly, I proceed to pass the following order:

- a] The impugned order dated 29/08/2019 passed by learned Sessions Judge, Chandrapur in Criminal Appeal No. 79/2018 and the judgment and order dated 29/08/2019 passed by the learned Judicial Magistrate First Class, Court No. 7, Chandrapur in summary Criminal Case No. 2617/2015 is hereby set aside.
- b] The applicant is acquitted of all the charges leveled against him.
- c] The fine, if paid, is to be returned back to the applicant. His bail bonds stands cancelled.
- d] The fees of the appointed counsel be quantified as per Rule.

19. The revision application is **disposed of**.

[URMILA JOSHI-PHALKE, J.]