



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (APL)NO. 107/2025

1. Vijay S/o. Dharamdas Assudani,
Aged about 45 years, Occ- Service,
R/o. Plot No. 31, Sant Gyaneshwar Society,
Om nagar, Koradi Road,
Nagpur- 440030

... APPLICANT

...VERSUS...

1. State Of Maharashtra,
Through Police Station Jaripatka,
Dist. Nagpur
2. State Excise Department,Civil Lines
Through Mr. Rahul Vijay Pawar
Nagpur-440001.

...NON-APPLICANTS

Mr. Shyam Dewani, Advocate for applicant
Ms. Shamsi Haider, APP for non-applicant/State

CORAM : URMILA JOSHI-PHALKE AND
NANDESH S. DESHPANDE, JJ.

RESERVED ON : 20th NOVEMBER, 2025.
PRONOUNCED ON : 28th NOVEMBER, 2025.

JUDGMENT (PER : NANDESH S. DESHPANDE, J.)

Heard. Admit. Heard finally with the consent of learned Counsel for the parties.

2. The applicant has filed the present application for quashing and setting aside of the First Information Report vide Crime No. 110/2024, dated 26.10.2024, registered with the non-applicant no. 1, for offences punishable under Section 65(a)(e), 81, 83, 90 and 98 of the Maharashtra Prohibition Act, 1949.

3. The First Information Report in question was lodged by the Inspector State Excise, B Division Nagpur that one Amit Bhagchand Chelani, has stored a stock of foreign scotch / liquor which is for sale in the State of Haryana and is banned in the State of Maharashtra, at the house of the applicant. On the basis of this information while sitting on the side of his house, the accused no. 1 and 2 arrived with the said vehicle and drove the car to transport the goods when the vehicle was being loaded with scotch / liquor, a raid was conducted and recovery of certain amount was made by

the Investigating Officer. Furthermore, stock of liquor was also confiscated as per the provisions of Bombay Prohibition Act. The First Information Report in question was lodged against the applicant and the other five persons. It is this First Information Report which is being challenged by the accused no. 3 in the present case application.

4. We have Mr. Shyam Dewani, learned counsel for the applicant as also Mrs. Shamsi Haider, learned APP for the non-applicant/State.

5. Mr. Dewani submits that the applicant is the land lord of the premises in question which consists of one small room situated on the ground floor of Plot no. 31, Sant Gyaneshwar Society, Om Nagar, Koradi Road, Nagpur on leave and license to one Mr. Amit Bhagchand Chelani (accused no. 1) for a period of 33 months starting from 01/11/2023 to 31/07/2026 for the purpose of storing electrical items and not for any other purpose. He further submits that without his consent and knowledge, the accused no. 1 and 2 has stored liquor therein. He also states that there is a leave and

license agreement evidencing the said fact that the premises in question was lent out for residential purpose and also for storing the electrical items only and not for any other purpose. He therefore, submits that the stocking of the illegal liquor as stated in the First Information Report is without his consent and knowledge and he is no-way concerned to the said act of the other accused. He therefore, submits that no offence much less as complained of in the First Information Report is made out against the accused. While taking us through the provisions of the Maharashtra Prohibition Act, 1949 he states that the offence punishable under Section 65 (a)(e) speaks about import or export or transport and (e) speaks about sells or buys or possesses any intoxicant. He therefore submits that it is not even the first informants case that the applicant was engaged in these activities. He therefore submits that only because he is the owner of premises in question he has been falsely implicated without any role been attributed to him. He therefore prays that the First Information Report in question be quashed as against him.

6. While opposing the contentions advanced by the learned

counsel for the applicant, the learned APP submits that during the course of the investigation it was revealed that said / scotch liquor was brought from one Shri Amit Thakur in Haryana who delivered the above mentioned scotch / liquor through his transport in Delhi without any receipt. She further states that the investigating officer has collected enough material and also conducted a spot panchanama wherein the accused no. 1 Amit is storing the liquor as a tenant. She also submits that the applicant is habitual offender and offence is serious in nature no case for quashing is made out.

7. In the conspectus of these facts we have appreciated the rival contentions.

8. Section 65 of the Maharashtra Prohibition Act, 1949 reads as under:-

Whoever, in contravention of the provisions of this Act, or of any rule, regulation or order made or of any licence, pass, permit or authorization granted thereunder-

- “(a) *[imports or exports or transports any intoxicant] [(other than opium)] or hemp,*
- (b) *manufactures any intoxicant [(other than opium)],*

(c) constructs or works any distillery or brewery,
 (d) bottles liquor,
 (d) [sells or buys or possesses any intoxicant] [(other than opium)] or hemp,
 (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)].
 [(g) cultivates or collects hemp]
 [shall, on conviction, be punished for each such offence [with imprisonment for a term which shall not be less than three years but which may extend to five years or with fine which shall not be less than twenty five thousand rupees but which may extend to fifty thousand rupees or with both].”

9. The sub-Clauses invoked either in the present applicants are (a) and (e). A perfunctory glance at the said sub-clauses would reveal that what is prohibited by the said sub-clauses is import, export or transport of any intoxicant and sale, buy or possession of any intoxicant. As can be seen from the above clauses that the role of the applicant is limited to he being a landlord of the premises in question. Therefore in our view clause 65 (a) and (e) are not attracted. Furthermore, as far as clause (a) and Section 81 is concerned, it speaks about penalty for attempts or abetments and states that, whoever attempts or commits to abet the commission of an offence shall on conviction be punished for such attempt of

abetment with the same punishment as is provided for the principle offence. Furthermore, Section 83 speaks about penalty for conspiracy and Section 90 speaks about penalty for offence not otherwise provided for. All these three sections are even not attracted in the present even if the allegations in the First Information Report are taken on their face value. As far as Section 98 is concerned even the same is not attracted as it only speaks about things liable for confiscation since its not a penal provision. In that view of the matter, in our opinion even if the allegations in the First Information Report as against the applicant are taken to be true, no offence is made out against the applicant. The continuance of further criminal proceedings against the applicant would therefore be a travesty of justice and abuse of the process of Court. Situation would therefore fall within the parameter of **State of Haryana & Others vs. Ch. Bhajan Lal & Others** reported in 1992 Supp. (1) SCC 335, which is reproduced below :-

“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

10. In that view of the matter, we pass the following order:-

ORDER

- (i) Application is allowed.
- (ii) The First Information Report vide Crime No. 110/2024 dated 26.10.2024 at Police Station Jaripatka for offences punishable under Section 65(a)(e), 81, 83, 90 and 98 of the Maharashtra Prohibition Act, 1949 as also the charge-sheet vide Summary Criminal Case No. 925/2025 is quashed and set aside to the extent of the present applicant.
- (iii) The application is allowed and disposed of in above said terms.

(NANDESH S. DESHPANDE, J.)

(URMILA JOSHI-PHALKE, J.)

Shubham