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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CRL.M.C. 6969/2023 & CRL.M.A. 26006/2023

NEERAJ GUPTA .....Petitioner

Through: Mr. Manoj Sharma, Mr. Kapil Kaushik, Mr. Deepak Shukla, Mr. Alok Singh, Mr. Gaurav Bhardwaj and Mr. Vinay Kumar Srivastav, Advocates.

versus

THE GOVT. OF NCT OF DELHI, DEPARTMENT OF HOME AFFAIRS & ORS. .....Respondents

Through: Mr. Mukesh Kumar, APP for the State.
Insp. Rajeev Ranjan and SI Satish Kumar, PS Bara Hindu Rao, Delhi.

CORAM:
HON'BLE MR. JUSTICE AMIT SHARMA

<u>O R D E R</u>

% **03.04.2025**

1. This hearing has been done through hybrid mode.

2. The present petition under Section 482 of the Cr.P.C. has been filed seeking the following prayers: -

> "A. To set aside the summoning order dated 01.02.2021 & 10.08.2023 passed by LD. ACMM, Tis Hazari Court Complex, Central District, Delhi in FIR No. 201/2015. in the interest of justice and or;
> B. To quash the charge sheet arising from FIR No. 201/2015 of P.S. Bara Hindu Rao, pending before the Ld. ACMM, Tis Hazari Court, Delhi, in so far as it relates to the petitioner herein and or;
> C. Such other and further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case may also be passed."

3. The case of the prosecution is that on 18.12.2015 at about 9 P.M., ASI

Kiranpal received information that a Toyota Etios Radio Taxi bearing registration number 'DL 1RY 4619' which is carrying illicit liquor will pass near Barf Khana Road leading towards Azad Market, Delhi. Thereafter, ASI Kiranpal was directed by the SHO, P.S. Bara Hindu Rao to take necessary action. Then, ASI Kiranpal along with the staff had rushed to Azad Market Chowk and checked the said offending vehicle coming from the Barf Khana side. At about 10:10 P.M., upon checking the offending vehicle, a total of 23 cardboard boxes were recovered from the vehicle, wherein, each box contained 50 quarters of country made liquor. Out of the said 23 boxes, the first nine boxes containing country made liquor consisted of the mark, "Oasis Overseas Exports Private Ltd. Village Jatwar, Tehsil Narayangarh District-Ambala, Haryana, For Sale in Haryana," and the other nine boxes consisted of the mark "Orange Oasis Commercial Private Ltd. Village Jatwar, Tehsil Narayangarh, District Ambala, Haryana, For Sale in Haryana" and the remaining 5 boxes with country made liquor had the mark "*rasila santra masaledar desi sharab*, Village Badholi, Tehsil Narayangarh, District Ambala, Haryana, For Sale in Haryana." The said 23 boxes were seized and thereafter, FIR No. 201/2015 was registered at P.S. Bara Hindu Rao for the offences under Sections 33/38 of the Delhi Excise Act, 2009 (for short, 'Excise Act'). Subsequently, the driver of the said vehicle namely, Dinesh Jain (respondent No. 2) and conductor, Gunjan (respondent No. 3) were arrested on 19.12.2015. Then, the country made liquor bottles were seized and submitted in the *malkhana*, which were later sent for analysis to the Excise Control Laboratory, Vikas Bhawan, I.P. Estate.

4. During the course of investigation, documents of the said vehicle were seized which revealed that the offending vehicle is registered in the name of

Meru Cab Company. Thereafter, a notice under Section 91 of the Cr.P.C. was served to Meru Cab Company, Dwarka Office upon which it was learnt that the vehicle was registered in the name of "Meru Cab Company", whose Directors were Farahat Gupta and Neeraj Gupta. After the investigation was complete, chargesheet was filed on 21.10.2016, wherein, the petitioner was chargesheeted under Section 52 of the Excise Act without arrest along with Dinesh Jain (respondent No.2) and Gunjan (respondent No.3) who were chargesheeted under Sections 33/38 of the Excise Act. Later, a supplementary chargesheet was also filed against "M/s Meru Cab Company" as the said company was the registered owner of the offending vehicle before the concerned learned Trial Court. *Vide* the summoning order dated 01.02.2021, learned ACMM-02, Central, Tis Hazari Courts issued summons against the present petitioner. Thereafter, *vide* order dated 10.08.2023, the learned ACMM had issued non bailable warrants against the present petitioner. Therefore, the present petition has been filed assailing the aforesaid orders.

5. Learned counsel appearing on behalf of the petitioner submits that the latter has been arrayed as an accused in the chargesheet by the aid of Section 52 read with Section 56 of the Delhi Excise Act. It is submitted that the registered owner of the offending vehicle was the company, i.e., Meru Cab Company Pvt. Ltd., and therefore, the said company ought to have been arrayed as an accused and in that case, the case of the petitioner would be then covered under Section 56 of the Delhi Excise Act.

6. Sections 52 and 56 of the Delhi Excise Act, 2009 reads as under:

> "**52. Presumption as to commission of offence in certain cases.**
> (1) In prosecution under section 33, it shall be presumed, until the contrary is proved, that the accused person has committed the offence

punishable under that section in respect of any intoxicant, still, utensil, implement or apparatus, for the possession of which he is unable to account satisfactorily.
(2) Where any animal, vessel, cart or other vehicle is used in the commission of an offence under this Act, and is liable to confiscation, the owner thereof shall be deemed to be guilty of such offence and such owner shall be liable to be proceeded against and punished accordingly, unless he satisfies the court that he had exercised due care in the prevention of the commission of such an offence."

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56. Commission of offence by companies.
(1) If the person committing an offence under this Act is a company, the company as well as every person in charge of and responsible to, the company for the conduct of its business at the time of the commission of the offence, shall be deemed to be guilty of offence, and shall be liable to be proceeded against and punished accordingly:
PROVIDED that where a company has different establishments or branches or different units in any establishment or branch, the concerned Chief Executive and the person in charge of such establishment, branch, unit nominated by the company as responsible for the conduct of the business shall be liable for contravention in respect of such establishment, branch or unit:
PROVIDED FURTHER that nothing in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.
(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of any director, manager, secretary, or other officer of the company, such director, manager, secretary or other officer shall be liable to be proceeded against and punished accordingly.
Explanation.- for the purpose of this section -
"company" means any body corporate and includes a firm or other association of individuals; and "director", in relation to firm, means a partner in the firm."

7. It is further submitted that, even as per the case of the prosecution, no

case of vicarious liability can be imputed against the present petitioner as both respondent Nos. 2 and 3 in their disclosure statements have not assigned any role to the petitioner or the accused company. Perusal of the disclosure statement of respondent Nos. 2 and 3, shows that the actions of the said respondents were of their own volition and without any abetment or involvement of the petitioner or accused company or its Directors.

8. *Per contra*, learned APP for the State submits that the chargesheet has been filed with respect to the company and which was the registered owner of the vehicle, and therefore, in terms of Section 56 of the Delhi Excise Act, the present petitioner, who was the Director at the relevant time, is liable to be prosecuted.

9. Heard learned counsel for the parties and perused the record.

10. In the present case, the petitioner is being prosecuted as Director of Meru Cab Company Pvt. Ltd. The other document on the basis of which the present petitioner is being prosecuted is the agreement which is executed between the company, *i.e.,* Meru Cab Company Pvt. Ltd. and the driver of the offending vehicle, *i.e.,* respondent No. 2. Initially the chargesheet was filed without naming the company as accused. However, as stated in the status report, a supplementary chargesheet has been filed making the company as accused.

11. In terms of Section 52 of the Act, there is a presumption with regard to the owner of the vehicle with respect to offence committed under the Act. In the present case, the owner of the vehicle is the company as mentioned hereinabove. The investigation in the present FIR does not indicate any role of the company with regard to the seizure affected from respondent Nos. 2 and 3. Admittedly, respondent Nos. 2 and 3, in their disclosure statements,

have not stated anything with regard to the role of the owner of the offending vehicle*, i.e.,* the company in the present case. Even in order to raise the presumption, at this stage, some foundational facts had to be brought on record by the prosecution to show abetment or negligence or knowledge of the fact that respondent No. 2 was during the course of his agreement with the owner of the vehicle had indulged in any illegal activities. In the present case, the action of respondent No. 2 was independent of his agreement with the accused company. In order to attract the liability of the company in the present case, something more ought to have been brought on record. It is only if the prosecution is lodged against the company, as the owner of the vehicle, on the basis of relevant material, the liability of its directors would come under Section 56 of the said Act. The prosecution, by way of foundational facts, have to first establish a case of presumption under Section 52 of the said Act.

12. The Hon'ble Supreme Court in **Just Rights For Children Alliance and Another v. S. Harish and Others, 2024 SCC OnLine SC 2611**, while discussing the concept of Statutory Presumption and Principle of Foundational Facts, has observed and held as under: -

> "**a. Concept of Statutory Presumption and Principle of Foundational Facts.**
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> 166. **What can be discerned from the above is that the idea behind providing for a statutory presumption of culpable mental state is in view of the exigency posed by the difficulty that often exists in establishing certain types of offences such as inchoate offences due to its clandestine nature. Such presumptions are in essence an exception to the cardinal principle of criminal jurisprudence that the act does not make a person guilty unless the mind is also guilty.**
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> 167. Traditionally, it is the prosecution who bears the burden of

proving every element in a particular offence, including the accused's mental state, beyond a reasonable doubt. In order to establish the commission of any offence, the prosecution must stand on its own legs i.e., the onus lies on the prosecution to prove beyond reasonable doubt not just the wrongful act but also the wrongful intention of the person in doing such an act. However, in certain offences particularly economic offences or inchoate offences like possession of child pornography where apart from the *actus reus* there exists no other material to depict or demonstrate the *mens rea*, it is too difficult for the prosecution to look into the mind of the accused to cull out with certainty what his intention was or could have been for doing a particular act let alone cogently establish the same beyond a reasonable doubt. Due to the elusive and concealed nature of such offences there is often little to no direct evidence available to establish what was in fact in the mind of the accused at the time when the particular act in question occurred or that the said act was done only with a particular intention.

168. It is in such scenarios, the legislature consciously provides for a statutory presumption of a culpable mental state to overcome the aforesaid hurdles and assist the prosecution to prove its case. This presumption of a culpable mental state is neither a conclusive proof of guilt for any particular offence nor does it completely replace or absolve the prosecution of its burden of proof and should not be understood as such, but rather it is a potent tool to assist the prosecution in discharging its initial burden and establishing its case. It seeks to bridge the evidentiary gap that exists between the *actus reus* and the *mens rea* in complex clandestine offences which otherwise cannot be proved through conventional means.

169. One good reason for providing such statutory presumptions in different legislations is owed to the fact that at times having regard to the peculiar case the prosecution may find it extremely difficult to know the mind of the accused so as to establish his intention and mental state. In contrast, the accused may not have to face the same degree of difficulty because he is fully aware of his mental state and can explain his intentions on the basis of his conduct or actions.

170. However, since the courts were in *seisin* of the harshness of such presumptions and the inherent danger they pose - particularly in blurring the line between the presumption of a culpable mental state and the presumption of the guilt itself and thereby undoing or compromising the fairness of such criminal

proceeding, this Court for the first time in *Baldev Singh* (supra) sowed the seeds for a test to ascertain as to when such presumption can be safely attracted which was later more fully evolved in *Noor Aga* (supra) wherein a brightline test was laid down in the form of the 'Rule or Principle of Foundational Facts'.

171. This 'Rule or Principle of Foundational Facts' *simpliciter* lays down that before the statutory presumption of culpable mental state could be validly invoked, the prosecution must first establish certain foundational facts. These foundational facts typically involve or correspond to proving those facts or elements that cogently establish the *actus reus* required for the offence alleged by the prosecution. It is only after such foundational facts have been proved beyond a reasonable doubt that the prosecution may take recourse of the statutory presumption provided by the legislature. The rationale behind the same is two-fold. *First*, in the absence of any *actus reus* there is no possible way to ascertain the corresponding *mens rea* that is required to be established. This is because it is the *actus reus* which demarcates or delineates the *mens rea* which is to be looked for and established. Without an *actus reus* of any form there arises no question of establishing and consequently presuming the *mens rea*, in view of the fundamental principle of criminal jurisprudence, that no one should be punished for their thoughts or intention alone unless accompanied by some form of act. *Secondly*, and more importantly it ensures that the statutory presumption does not overreach or take the place of proof of guilt under the guise of 'presumption of culpable mental state'.

172. It would be too much to shift the entire onus onto the accused and to then ask him to prove a negative fact. Thus, any statutory presumption would operate only after the prosecution first lays the foundational facts necessary for the offences that have been alleged beyond a reasonable doubt. This is because a negative cannot be proved in the initial threshold, in order to prove a contrary fact, the fact whose opposite is sought to be established must be proposed first. **Thus, in law it is trite that the initial burden always lies on the prosecution. This why, the establishment of foundational facts by the prosecution is a prerequisite for triggering the statutory presumption for shifting the onus on the accused to prove the contrary. It is a delicate balance struck between the practical need for such presumption in law and the cardinal principles of**

criminal jurisprudence to ensure that the presumption does not cross or transgress the fine line that demarcates presumption of 'culpable mental state' from the 'presumption of guilt' itself."

(emphasis supplied)

13. In view of the aforesaid discussion and law laid down by the Hon'ble Supreme Court, the present petition is allowed and disposed of accordingly.

14. The impugned summoning order dated 01.02.2021 and non-bailable warrants issued *vide* order dated 10.08.2023 passed by learned ACMM along with the chargesheet pending in FIR No. 201/2015, under Sections 33/38/52 of the Delhi Excise Act, 2009, and all other proceeding emanating therefrom, in the concerned learned Trial Court are hereby quashed *qua* the present petitioner.

15. Pending applications, if any, also stand disposed of accordingly.

16. Copy of the order be sent to the concerned learned Trial Court for necessary information and compliance.

AMIT SHARMA, J

APRIL 3, 2025, nk/sc *Click here to check corrigendum, if any*