



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

CRIMINAL WRIT PETITION NO.209 OF 2023

Tushar S/o. Anil Jaiswal,
Aged 37 Yrs., Occ.: Business, Partner/
Licensee of M/s. R. M. Jaiswal Wine
Shop, situated at Gandhi Chowk, Wani,
Tq. and P.S. Wani, District Yavatmal,
R/o. Row House No.9, Vrindavan
Park, Bansal Layout, Varora Road,
Wani, Dist. Yavatmal

... PETITIONER

// VERSUS //

State of Maharashtra,
Through P.S.O. Shirpur,
Tq. & P.S. Wani, Distt. Yavatmal,
In Crime No.203/2021 u/s. 65(a),
65(e) of Maharashtra Prohibition Act,
1949 and u/s. 130(1), 177 of Motor
Vehicle Act, 1988

... RESPONDENT

Mr. Anand Jaiswal, Sr. Adv. with Ms Radhika Bajaj, Advocate with Ms Aditi
Panpalia, Advocate for the petitioner
Ms M. H. Deshmukh, APP for the respondent/State

CORAM : G. A. SANAP, J.

DATE : 24/04/2023

ORAL JUDGMENT :

1. Heard.
2. Rule. Rule made returnable forthwith. Heard finally
with the consent of learned Advocates for the parties.

3. In this criminal writ petition, challenge is to the judgment and order dated 16.11.2022 passed by the learned Additional Sessions Judge-2, Kelapur, Yavatmal whereby the learned Sessions Judge rejected the revision application and confirmed the order dated 07.01.2022 passed by the learned Judicial Magistrate First Class, Wani. Learned Magistrate, Wani by his order dated 07.01.2022 rejected the application made by the petitioner under Section 457 of the Code of Criminal Procedure, 1973 for release of seized country liquor on supratnama.

4. The relevant facts are as follows:

The petitioner is having licence to run a liquor shop at Wani. The seized country liquor bottles were purchased by him from the distributor M/s. Shree Sai Enterprises, Yavatmal. The boxes of the liquor bottles, as per the transport pass, were to be transported in a vehicle bearing registration No. MH-29/BE-0179 to Wani by the route Wadgaon to Yavatmal Umari Wani. On 05.06.2021 on Ghugus to Chandrapur route at Chargaon Chowki, Taluka Wani, the officials of Shirpur police station intercepted the

said vehicle. On search of the vehicle, the police found that it was containing country liquor bottles worth Rs.8,01,600/-. The police seized the country liquor bottles. Crime bearing No. 203 of 2021 was registered under Section 65(a) and (e) of the Maharashtra Prohibition Act, 1949 (hereinafter referred to as 'the Prohibition Act') and Sections 130(1) and 177 of the Motor Vehicles Act, 1988. It is the case of the prosecution that at the relevant time there was prohibition on sell of liquor in District Chandrapur. The liquor seized in this case instead of bringing to the Wani was being transported to Chandrapur. When the vehicle was intercepted it was not driven by the driver whose name was mentioned in the transport pass. The vehicle was taken in the direction of the Chandrapur by a route which was not at all mentioned in the transport pass. The driver and one more person were found in the vehicle. Later on, the investigation revealed that the petitioner illegally transported the liquor contrary to the transport pass to the co-accused Nidhansingh Jagatsingh Dhagadi, who are from Chandrapur. The seized liquor is lying in the custody of the police.

5. The petitioner, who is the owner of the liquor bottles, made the application for return of the liquor bottles on supratnama. It is his case that he is having a licence to run a liquor shop at Wani. He had purchased the liquor bottles from distributor. The liquor was being transported from Wadgaon to Wani. It is further stated that driver inadvertently taken the wrong route. The place where the vehicle was intercepted falls within the limits of Wani Taluka. It is submitted that he has right to sell the liquor. If the liquor is not handed over to him then he would suffer irreparable loss. His business would be affected. He is ready to furnish the undertaking for production of the liquor as and when directed by the Court.

6. The prosecution opposed the application. It is contended that there was breach of transport pass. The route mentioned in the transport pass was changed. The vehicle was intercepted on Chandrapur route at a distance of near about 13 Km away from Wani. It is further stated that the Chandrapur border was hardly 10-15 km away from the spot. It is stated that the huge

quantity of liquor was being transported to Chandrapur District where there was prohibition on the sell of the liquor. It is further stated that apart from the substantive sentence for the commission of offence, Section 98 of the Prohibition Act provides for the confiscation of the liquor.

7. After hearing the parties learned Magistrate found that no case was made out for release of the liquor. The petitioner who is one of the accused challenged the said order by filing the revision application. Learned Additional Sessions Judge dismissed the revision application. The petitioner is, therefore, before this Court.

8. I have heard learned senior Advocate Mr Anand Jaiswal for the petitioner and Ms M. H. Deshmukh, learned APP for the State. Perused the record and proceeding.

9. Learned senior Advocate Mr Jaiswal submitted that the order passed by the learned Additional Sessions Judge, Yavatmal

cannot be sustained. Learned Senior Advocate submitted that the reasons recorded by the learned Additional Sessions Judge are not in accordance with law. Learned senior Advocate submitted that merely because Section 98 of the Prohibition Act provides for confiscation of the liquor, the Court cannot reject the application for handing over the liquor to the owner on supratnama. Learned senior Advocate submitted that the liquor is not spurious liquor. Learned Advocate further submitted that it was purchased, by complying all the provisions and rules, for sell at the licenced shop of the petitioner at Wani. Learned Advocate submitted that somehow or the other, the driver of the vehicle missed the route and traveled on Ghugas-Chandrapur route. Learned senior Advocate submitted that simply because of this the offence under Section 65 (a) and (e) of the Prohibition Act would not get attracted.

10. As against this, learned APP submitted that in the transport pass the route for transportation of the liquor in the vehicle was mentioned. Learned APP further pointed out that in the transport pass name of the driver of the vehicle was also

mentioned. Learned APP pointed out that the driver named in the transport pass was not driving the vehicle when it was intercepted by the Shirpur Police Station. Learned APP further pointed out that the said driver was not holding a valid licence. Learned APP submitted that *prima facie* offence under Section 65(a) and (e) of the Prohibition Act has been made out. Five accused are facing the prosecution for the said offence. Learned APP submitted that on proof of the charge the seized liquor is liable to be confiscated. Learned APP submitted that the provisions of Section 98 are mandatory. Learned APP further submitted that Section 99 of the Prohibition Act would also stand in the way of the petitioner.

11. In order to appreciate the rival submissions I have perused the record and proceedings. The admitted facts having bearing with the controversy needs to be highlighted at the outset. The petitioner has admitted that they were on the way from Yavatmal to Wani. The driver of the truck missed the route and carried the vehicle on Ghugas-Chandrapur route. It is undisputed that this route was not mentioned in the transport pass. Similarly,

the driver named in the transport pass was not driving the said vehicle at the relevant time. At the relevant time, there was prohibition on sell of liquor in Chandrapur District. The vehicle carrying the country liquor was intercepted on the route proceeding towards Chandrapur. Chandrapur District border was hardly at a distance of about 10-15 Km from the said spot. It is further seen that the said spot was 13 Km ahead of Wani. It is the case of the prosecution that this transportation of the liquor by the route to Chandrapur District was contrary to the transport pass granted by the authority.

12. In the above background, Sections 98 and 99 of the Prohibition Act are required to be considered. For the convenience Section 98 is extracted below:

“98. Things liable to confiscation.- (1) Whenever any offence punishable under this Act has been committed -

(a) any intoxicant, hemp, mhowra flowers, molasses, materials, still utensil, implement or apparatus in respect of which the offence has been committed.

(b) where in the case of an offence involving illegal possession the offender has in his lawful possession any intoxicant, hemp, mhowra flowers or molasses other than those in respect of which an offence under this Act has been committed, the entire stock of such intoxicant, hemp, mhowra flowers or

molasses,

(c) where in the case of an offence of illegal import, export or transport, the offender has attempted to import, export or transport any intoxicant, hemp, mhowra flowers or molasses, in contravention of the provisions of this Act, rule, regulation or order or in breach of a condition of a licence, permit pass or authorization, the whole quantity of such intoxicant, hemp, mhowra flowers or molasses which he has attempted to import, export, or transport.

(d) where in the case of an offence of illegal sale, the offender has in his lawful possession any intoxicant, hemp, mhowra flowers or molasses other than that in respect of which an offence has been committed, the whole of such other intoxicant, hemp, mhowra flowers or molasses, shall be confiscated by the order of the Court.

(2) Any receptacle, package or covering in which any of the articles liable to confiscation under sub-section (1) is found and the other contents of such receptacle, package or covering and the animals, carts, vessels or other conveyances used in carrying any such article shall like-wise be liable to confiscation by the order of the Court.”

13. Perusal of this Section would show that whenever any offence punishable under this Act mentioned in Section 98 has been committed then the intoxicant, hemp, mhowra flowers or molasses etc. is liable to be confiscated by the order of the Court. This section does not state that such confiscation has to be ordered only when the person has been found guilty and punished for the said offence. For the purpose of confiscation the condition

precedent is the commission of an offence punishable under the Prohibition Act.

14. In the above context, it would be necessary to consider the provisions of Section 99 of the Prohibition Act. It provides for return of things liable to confiscation to *bona fide* owners. For the purpose of convenience Section 99 is extracted below:

“99. Return of things liable to confiscation to bona fide owners. - *When during the trial of a case for an offence under this Act the Court decides that anything is liable to confiscation under the foregoing section, the Court may, after hearing the person, if any, claiming any right thereto and the evidence, if any, which he produces in support of his claim, order confiscation, or in the case of any article other than an intoxicant, hemp, mhowra flowers or molasses give the owner an option to pay fine as the Court deems fit in lieu of confiscations:*

Provided that no animals, cart, vessel, vehicle or other conveyance shall be confiscated if the owner thereof satisfies the Court that he had exercised due care in preventing the commission of the offence.

15. Section 99 provides that if the Court decides during the trial that anything is liable to be confiscated under Section 98 then Court may, after hearing the person, if any, claiming any right

thereto and the evidence, if any, which he produces in support of his claim, order confiscation, or in the case of any article other than an intoxicant, hemp, mhowra flowers or molasses give the owner an option to pay fine as the Court deems fit in lieu of confiscation. This second part of section 99 clearly indicates that confiscation is the only option in case of an intoxicant, hemp, mhowra flowers or molasses.

16. It is to be noted that, therefore, the Court trying the offence would be required to consider the combine effect of Sections 98 and 99 of the Prohibition Act and pass an appropriate order with regard to the confiscation of the country liquor seized in this crime. There is one more reason to reject the contention of the petitioner. It is the case of the petitioner that he is the rightful owner of the country liquor and entitled to sell the same. Even if the liquor is returned to the petitioner, he cannot be allowed to sell the same because the order of confiscation would be required to be passed by the learned Magistrate at the stage of trial. It is further pertinent to mention that if permission is granted to sell with an undertaking to

deposit money, in my view same would not serve the purpose. Grant of such a permission would require continuous monitoring by the Court as well as by the Police. The sell of the liquor would take place at the shop of the petitioner. Therefore, in my view, considering the nature of the crime committed in this case and the above technicalities it would not be possible to grant the prayer. The material placed on record by the prosecution is *prima facie* sufficient to conclude that the liquor, on the basis of the transport pass, was being transported to Chandrapur. It was in flagrant breach and violation of the condition of the transport pass. It is to be noted that this petitioner in order to earn extra money and to satisfy his greed seems to have indulged in this act of transporting the liquor to a district where there was prohibition on the sell of the liquor. The persons found in possession of the vehicle were other than the one mentioned in the transport pass. The petitioner had, therefore, taken risk. The defence of the petitioner that the driver inadvertently missed the route cannot be accepted at this stage.

17. In my view, therefore, the prayer for release of the

liquor on supratnama cannot be granted. The liquor would be required to be preserved till the trial is concluded for the purpose of trial. The Court would be required to pass an appropriate order by exercising the powers under Sections 98 and 99 of the prohibition Act. In the facts and circumstances, I do not see any substance in the petition. The petition is accordingly **dismissed**.

18. Considering the serious nature of the crime and the seizure of huge quantity of the country liquor, being illegally transported in contravention of the terms of the transport pass, it would be appropriate to direct the learned Judicial Magistrate First Class, Wani to dispose of the case expeditiously and in any case within three months from today. Learned Magistrate is accordingly directed to dispose of the said case within a period of three months from today.

19. Rule stands discharged. No order as to costs.

(G. A. SANAP, J.)

Namrata