

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 04TH DAY OF APRIL, 2024

BEFORE

THE HON'BLE MR. JUSTICE S RACHAIAH

CRIMINAL REVISION PETITION NO. 129 OF 2021

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BETWEEN:

1. SRI. DAYANANDA @ R BABU
S/O M V RAJU
AGED ABOUT 40 YEARS
R/AT KUDINEERU MUDDANAHALLI VILLAGE
RATNAPURI POST, HUNSUR TALUK
MYSORE DISTRICT - 571 334.
2. R. RAVI
S/O K RAJU
AGED ABOUT 31 YEARS
R/AT, RATHNAPURA COLONY
MAIN ROAD OF MARAMMA TEMPLE
HUNSUR TALUK
MYSURU DISTRICT - 34.

...PETITIONER

(BY SRI. PRATHEEP K C, ADVOCATE)

AND:

THE STATE OF KARNATAKA
REP. BY EXCISE SUB-INSPECTOR
HUNSUR RANGE, HUNSUR TALUK
MYSORE DISTRICT
REP. BY ITS
STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
BANGALORE - 01.

...RESPONDENT

(BY SRI. RAHUL RAI K, HCGP)

THIS CRL.RP IS FILED U/S. 397 R/W 401 CR.P.C
PRAYING TO SET ASIDE THE JUDGMENTS DATED 12.01.2021
PASSED BY THE VIII ADDITIONAL DISTRICT AND SESSIONS

JUDGE AT MYSURU SITTING AT HUNSUR IN CRL.A.NO.12/2016 AND IN C.C.NO.332/2009 DATED 26.12.2015 PASSED BY CIVIL JUDGE AND JMFC AT HUNSUR AND ETC., ,

THIS CRIMINAL REVISION PETITION HAVING BEEN HEARD AND RESERVED ON 16.01.2024, COMING ON FOR PRONOUNCEMENT OF ORDER, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

1. This Criminal Revision Petition is filed by the petitioners, being aggrieved by the judgment of conviction dated 26.12.2015 and order of sentence dated 29.12.2015 in C.C.No.332/2009 on the file of Civil Judge and JMFC, Hunsur and its confirmation judgment and order dated 12.01.2021 in Crl.A.No.12/2016 on the file of VIII Additional District and Sessions Judge, Mysuru, Sitting at Hunsur seeking to set aside the concurrent findings recorded by the Courts below, wherein the petitioner/accused is convicted for the offences punishable under Sections 32, 34 and 38-A of Karnataka Excise Act (for short 'K.E.'Act).

2. The rank of the parties in the Trial Court will be considered henceforth for convenience.

Brief facts of the case are as under:

3. It is the case of the prosecution that on 24.11.2008 at about 10.15 a.m., the Sub-Inspector of Hunsur Excise Range

was deputed on patrolling duty along with his staff near Challahalli Village. They have received credible information that the accused were proceeding on the motorbike bearing Reg. No.KA-09-X-4142 with box containing the liquor. The officials of the Excise-Hunsuru Range have intercepted the said vehicle and enquired about the permit and other related documents to transport the said liquor. When the satisfactory answer was not obtained by them, the Sub-Inspector of Excise has arrested the accused and interrogated them and also seized the items which were being carried by the accused. After having seized the said liquor, the Sub-Inspector took the samples of the said liquor for sending the same to FSL for chemical analysis. As per the averments of the complaint, 48 bottles of liquor have been seized by the Sub-Inspector and each bottle containing 180 ml of Original Choice Deluxe Whiskey. The case came to be registered against the accused Nos. 1 to 3. The respondent police have conducted investigation and submitted charge sheet.

4. To prove the case of the prosecution, the prosecution examined seven witnesses as P.W.1 to P.W.7 and got marked 8 documents as Ex.P1 to P8 and also identified as

M.O.Nos.1 to 28. On the other hand, two documents were got exhibited as Ex.D1 and Ex.D2 on behalf of the petitioners.

5. The Trial Court after appreciating the oral as well as documentary evidence on record, convicted the petitioners for the offences stated *supra*. Being aggrieved by the same, the petitioner preferred an appeal before the Appellate Court, the Appellate Court confirmed the judgment of conviction rendered by the Trial Court. Being aggrieved by the same, the petitioners/accused Nos.1 and 3 have preferred this revision petition seeking to set aside the concurrent findings.

6. Heard Sri. Pratheep K.C., learned counsel for the petitioners and Sri Rahul Rai.K, learned High Court Government Pleader for the respondent – State.

7. It is the submission of learned counsel for the petitioners that the concurrent findings recorded by the Courts below in convicting the petitioners is contrary to the evidence and settled principles of Law. Therefore, the impugned judgments are required to be set aside.

8. It is further submitted that the evidence of P.W.7 who is the Investigating Officer which discloses that the FIR

was registered on 24.11.2008 at about 10.15 a.m. However, the search and seizure was conducted between 8.30 a.m. to 8.45 a.m. i.e., before registration of FIR, the search and seizure was conducted which is against to the settled principles of law. Therefore, the registration of FIR after conducting search and seizure itself is bad in law and the Court ought not to have acted upon such FIR.

9. It is further submitted that the Trial Court and the Appellate Court committed an error in appreciating the documents which are marked as Ex.P1 to P8 in accordance with law. Whenever there is a dispute regarding admission of the document, the prosecution must have complied Section 294(3) of Cr.P.C. In the absence of the said compliance, the document ought not to have been considered for the purpose of analyzing the evidence.

10. It is further submitted that the incriminating material which is required to be put to the accused in the statement recorded under Section 313 Cr.P.C., has not been put to the accused properly. In the absence of proper recording the statement under Section 313 Cr.P.C., it is not appropriate to record the conviction, however, the Trial Court recorded the conviction without following the procedure

established under law, therefore, it is necessary to interfere with the said findings in order to secure the ends of justice. Making such submission, the learned counsel for the petitioners prays to allow the petition.

11. *Per contra*, Sri. Rahul Rai K, learned High Court Government Pleader (for short 'HCGP') vehemently justifying the concurrent findings and submits that the Trial Court and Appellate Court rightly appreciated both oral and documentary evidence on record and recorded the conviction.

12. It is further submitted that the Investigating Officer after receiving the credible information, went to the spot and arrested the accused and seized the items which were being carried by the accused without having license and therefore, the Investigating Officer could not obtain the permission of the Magistrate which is required to be obtained as per Section 53 of the Act, however, the Investigating Officer offered an explanation under which circumstances he could not secure the said permission and the said explanation is marked as Ex.P5, which is in consonance with the provision under Section 54 of the Act.

13. It is further submitted that the accused has not explained nor produced any documents to show that they were authorized to transport the said liquor to the destination. In the absence of proper document being produced, registration of case on the basis of the documents was appropriate. The Courts below after appreciating the evidence, both oral and documentary on record, recorded the conviction. Therefore, interference with the said findings may not be proper. Having submitted thus, learned HCGP prays to dismiss the petition.

14. After having heard the learned counsel for the respective parties, it is necessary to consider as to whether both the Courts have properly appreciated both the facts and law to arrive at a conclusion regarding conviction.

15. On perusal of the entire documents, Ex.P1 is considered as seizure mahazar under which liquor bottles have been seized by stating that the accused were transporting it without having any valid license. It is the submission of learned counsel for petitioner that the search and seizure conducted without registration of FIR in respect of cognizable offence is bad in law is concerned, it is relevant to refer to the provision under Sections 154 and 157 of Cr.P.C..

"154. Information in cognizable cases.—(1)
Every information relating to the commission of a cognizable

offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf:

[Provided that if the information is given by the woman against whom an offence under section 326A, section 326B, section 354, section 354A, section 354B, section 354C, section 354D, section 376, [section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB], section 376E or section 509 of the Indian Penal Code (45 of 1860) is alleged to have been committed or attempted, then such information shall be recorded, by a woman police officer or any woman officer:

Provided further that—

(a) in the event that the person against whom an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, 1[section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB], section 376E or section 509 of the Indian Penal

Code (45 of 1860) is alleged to have been committed or attempted, is temporarily or permanently mentally or physically disabled, then such information shall be recorded by a police officer, at the residence of the person seeking to report such offence or at a convenient place of such person's choice, in the presence of an interpreter or a special educator, as the case may be;

(b) the recording of such information shall be video graphed;

(c) the police officer shall get the statement of the person recorded by a Judicial Magistrate under clause (a) of sub-section (5A) of section 164 as soon as possible.]

(2) A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant.

(3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of

an officer in charge of the police station in relation to that offence.

157. Procedure for investigation.—(1) *If, from information received or otherwise, an officer in charge of a*
80 police station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed, to the spot, to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender:

Provided that—

(a) when information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a police station need not proceed in person or depute a subordinate officer to make an investigation on the spot;

(b) if it appears to the officer in charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.

[Provided further that in relation to an offence of rape, the recording of statement of the victim shall be conducted at the residence of the victim or in the place of her choice and as far as practicable by a woman police officer in the presence of her parents or guardian or near relatives or social worker of the locality.]

(2) In each of the cases mentioned in clauses (a) and (b) of the proviso to sub-section (1), the officer in charge of the police station shall state in his report his reasons for not fully complying with the requirements of that subsection, and, in the case mentioned in clause (b) of the said proviso, the officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by the State Government, the fact that he will not investigate the case or cause it to be investigated."

On careful perusal of the above said provisions, it appears that there are two kinds of FIRs namely, the FIR can be registered by the informant which was duly signed by him. Secondly, the FIR can be registered by the police officer himself on any information received by him. In both the cases, the information should be reduced into writing and thereafter, the investigation must be carried out.

16. Ex.P1 being a panchanama, it cannot be termed as a complaint. FIR cannot be registered on the basis of

panchanama, however, in the present case, the respondent has registered the FIR on the basis of panchanama which is erroneous and not proper. The Trial Court ought not to have acted upon such FIR and cognizance should not have been taken on the strength of the said FIR. However, the Trial Court and the Appellate Court have committed error by considering the said FIR as appropriate and proper and recorded the conviction. Such conviction would be rendered as ineffective and the same can be termed as *non est* in law.

17. When the registration of FIR itself is *void abinitio*, the subsequent proceedings including the judgments are liable to be set aside. Therefore, the interference by the Revisional Court in setting aside the concurrent findings is justified.

18. In the light of the observations made above, I proceed to pass the following:-

ORDER

- (i) The Criminal Revision Petition is *allowed*.
- (ii) The judgment of conviction dated 26.12.2015 and order of sentence dated 29.12.2015 in C.C.No.332/2009 on the file of Civil Judge and JMFC, Hunsur and its

confirmation judgment and order dated 12.01.2021 in CrI.A.No.12/2016 on the file of VIII Additional District and Sessions Judge, Mysuru, Sitting at Hunsur are set aside.

- (iii) The petitioners are acquitted for the offences punishable under Sections 32, 34 and 38-A of Karnataka Excise Act.
- (iv) Bail bonds executed, if any, stand cancelled.

**Sd/-
JUDGE**

Bss