

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

MISC. CRIMINAL CASE No. 42867 of 2020

BETWEEN:-

- 1. SAKUL HAMID S/O IBRAHIM, AGED ABOUT 56 YEARS, OCCUPATION: DRIVING 123, MOSI KIRANAR STREET, 1B KRISHNA TALKIES ROAD, ERODE KARUNGALPALLYAM (TAMIL NADU)**
- 2. RAMESH PULLAMAR S/O NATARAJAN, AGED ABOUT 41 YEARS, OCCUPATION: DRIVING 2/49, SMALAYANDIPATTINAM S COIMBATORE (TAMIL NADU)**

.....PETITIONERS

(BY SHRI RISHI TIWARI, ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH STATION
HOUSE OFFICER THROUGH P.S. NAGALWADI,
(MADHYA PRADESH)**

.....RESPONDENT

(BY SHRI HITENDRA TRIPATHI, G.A.)

.....
Reserved on : 17.01.2023

Pronounced on : 14.02.2023
.....

This petition having been heard and reserved for orders, coming on for pronouncement this day, the court passed the following:

ORDER

Heard finally, with the consent of the parties.

2] This petition has been filed under Section 482 of Cr.P.C. for quashing the charge-sheet filed against the petitioners under Section 420, 467 and 468 of IPC and Section 34(2) of M.P. Excise Act, 1915, in Crime No.251/2019 registered at Police Station Nangalwadi, District- Barwani. A prayer is also made to quash the subsequent proceedings emanating from the aforesaid charge-sheet in S.T. No.25/2020, pending in the Court of Sessions Judge, Barwani.

3] In brief, the facts giving rise to the present petition are that the petitioner No.1/Sakul Hamid is the driver of the vehicle, whereas petitioner No. 2/Ramesh Pullamar is the co-driver, both of whom were apprehended on 02.11.2019, while they were found to be transporting 1541 boxes of liquor, in all, 13,869 bulk litres, in a truck bearing registration No.TN-52-F-4294. It is alleged in the charge-sheet that the petitioners were transporting the aforesaid liquor without proper license and the petitioners were also not able to inform as to who had loaded the liquor in the vehicle and the permit which they were carrying mentioned 1600 cases of liquor, whereas the total number of liquor boxes/cases found in the truck were 1541. During the course of investigation it has also been found that the petitioners did not get the documents stamped on each of the check-posts falling on their route, as it is alleged that they were

supposed to travel from Chandigarh to Kerala. Thus, it is alleged that the petitioners have committed the forgery by transporting the liquor illegally and that too with the quantity which was less than the quantity mentioned in the Permit. It is also mentioned in the charge-sheet that from the aforesaid infirmities found in the documents available with the petitioners, lead to only conclusion that they intend to transport the liquor on the same Permit for more than one occasions and since the liquor cases were less than the cases mentioned in the Permit, it has been concluded that the transportation of liquor was different than the one which was mentioned in the Permit and other documents, hence, Section 467, 468 and 420 of IPC have also been added. The charge-sheet has been kept open under Section 173(8) of Cr.P.C. against the owner of the vehicle Swami S. Krishnamurthy.

4] Counsel for the petitioner has submitted that the petitioners have been falsely implicated in the case which is apparent from the documents filed in the charge-sheet itself. Counsel has further submitted that the both petitioners are only the drivers of the vehicle and were acting on behalf of Kerala State Beverages Corporation (hereinafter referred to as KSBC) and were given a valid Permit dated 17.10.2019, as three import Permits were issued to them by the Deputy Commissioner of Excise, Kerala State Beverages Corporation, Thiruvananthapuram for import of intoxicating liquor from Empire Alcobrev Pvt. Ltd., Chandigarh.

5] Counsel has also drawn the attention of this Court to the requisite passes dated 29.10.2019, issued to the Empire Alcobrev Pvt. Ltd. by the Department of Excise and Taxation, Chandigarh for the purpose of export of liquor to Kerala in which vehicle number, batch number, driver's license number and driver's name were also mentioned in the Form D20-A and it was also mentioned in those passes that the consignment shall not be opened in transit. Subsequently, on 29.10.2019 itself, three retail invoices were also generated by the said Empire Alcobrev Pvt. Ltd. in the name of the buyer i.e. KSBC with all the requisite particulars, namely, quantity of liquor, batch number, destination etc. and on the said date only, the consignment was loaded in the said vehicle from the warehouse of Empire Alcobrev Pvt. Ltd. and departed for Kerala, but was apprehended mid way at Nangalwadi, District- Barwani on 02.11.2019, and it was found that the truck was also having 120 bags of garlic. The FIR was lodged on 02.11.2019 itself under Section 34(2) of the M.P. Excise Act, 1915 and the petitioners were arrested. Thereafter, the chronology of events is as hereunder:-

14.12.2019	A letter was issued by the In-Charge Officer of P.S. Nangalwadi to the Excise Department, Chandigarh requesting to provide true copies of import Permits.
26.12.2019	Another letter was issued by the P.S. Nangalwadi to the Deputy Commissioner of Excise, KSBC requesting to provide true copies of import

	Permits.
27.12.2019	The Excise and Taxation Department, Chandigarh issued a letter to the Collector Excise, Barwani clarifying that inadvertently, <i>Sendhwa</i> was mentioned as <i>Dendhwa</i> and it was also informed that the consignment of liquor was genuine.
24.01.2020	W.P. No.2302/2020 was also filed by M/s Empire Alcobrev Pvt. Ltd., Chandigarh, the owner of the consignment before this Court seeking quashment of the impugned FIR and a further relief was also sought in the form of direction for investigation for the offences committed by the S.H.O. and his team in apprehending the said vehicle illegally. (The aforesaid petition has been subsequently dismissed by this Court on 14.09.2022 holding that the same cannot be entertained and the said company Empire Alcobrev Pvt. Ltd. was given liberty to take recourse of law.)
30.01.2020	The charge-sheet was filed on the 90 th day of arrest of the petitioner.
27.02.2020	In W.P. No.2302/2020, as an interim order, it was also directed by this Court to the Commissioner, M.P. Excise Department to conduct an inquiry and submit a report before this Court on the next date of hearing.

13.03.2020	The charges were framed against the petitioners under Section 34(2) of the M.P. Excise Act, 1915, Section 420, 467, 468 read with Section 34 of IPC.
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6] Counsel for the petitioner has submitted that, by no stretch of imagination any of the charges levelled against the petitioners in the present case are made out. Even on perusal of the charge-sheet it is submitted that the liquor which was being transported by the petitioners was covered under valid Permit and the export passes issued by two different authorities of the State of Kerala and Chandigarh. It is further submitted that so far as the allegation that the liquor was found to be less than the quantity mentioned in the export permit is concerned, even assuming the same to be true, it does not fall under any definition of any offence.

7] Counsel has submitted that even otherwise the explanation of the short fall of the liquor is that the liquor was taken out by the Officers of the concerned police station as the petitioners have filed the photographs in W.P. No.2302/2020 of the boxes of liquor being used as trash cans in the said police station. Counsel has also drawn the attention of this Court to the relevant documents which have been seized from the possession of the present petitioners and the documents which have been called by the Investigating Officer from the concerned departments of Kerala and Chandigarh and it is submitted that there is no difference in those documents which have been seized from the petitioners and the documents called by the

aforesaid State owned departments. Thus, it is submitted that the petitioners who have been falsely implicated in the case and have already spent around two years of incarceration as they were released on bail on 15.07.2021 in M.Cr.C No. 29973/2021, be quashed and appropriate cost be also imposed on the respondents for filing such false case against the petitioners.

8] Counsel for the petitioners has also drawn the attention of this Court to a proceeding initiated by the Collector, Barwani regarding confiscation of the vehicle and in the certified copy of the statement of Investigating Officer filed today, he has clearly stated that the liquor was being transported on valid documents and it also had the route from which the aforesaid liquor was to be transported with all the material particulars. However, it is also stated that the petitioners had violated the Permit condition by transporting sacks of garlic.

9] Counsel for the petitioner has relied upon a decision rendered by the Supreme Court in the case of **Inder Mohan Goswami and others Vs. State of Uttaranchal and others** reported as **(2007) 12 SCC 1** relevant paras of the same are 39 to 43. Counsel has also relied upon a decision rendered by the Supreme Court in the case of **Rini Johar and Ors. Vs. State of M.P. and Ors.** reported as **(2016) 11 SCC 703** to submit that not only this petition be allowed, but heavy cost be also imposed on the respondents for initiating a false case against the petitioners.

10] Counsel for the respondent/State, on the other hand, has opposed the prayer and it is submitted that no case for interference is made out. It is further submitted that no illegality has been committed by the Investigating Officer in filing the charge-sheet as the petitioners were found to be carrying garlic sacks above the cases of liquor, giving reasonable doubt about the suspicious transportation of liquor. Thus, it is submitted that the application be dismissed.

11] Heard counsel for the parties and perused the record.

12] From the record it is found that the date of incident in the present case is said to be 02.11.2019 as the FIR was lodged under Section 34(2) of the M.P. Excise Act. After the investigation, the charge-sheet has been filed on 30.01.2020 under Sections 420, 467 and 468 of the IPC and Section 34(2) of the M.P. Excise Act. In the charge-sheet, it is alleged that the State of Kerala had issued import permit for 1600 boxes, however, from the possession of the petitioners, 1541 boxes have been seized and thus, there was a difference between the boxes mentioned in the permit and the actual boxes and thus, the same amounts to forgery. In sum and substance, the allegations against the petitioners are that they were found to be transporting the liquor which fell short of the quantity mentioned in the permits under which the liquor was being transported.

13] In the considered opinion of this Court, such short fall in itself cannot amount to any forgery, especially when the import

permits and the documents issued by the Chandigarh Excise Department are not only authentic but they also contain the route as also the driver's name, licence number etc. and the Form L-38 issued by the Chandigarh Excise Department contains the said information, and on perusal of the import pass issued by the Kerala Excise Department at Thiruvananthapuram, the currency of permit i.e., the validity of the permit is also mentioned to be thirty days from the date of issue and the date of issue is 29.10.2019 whereas, the seizure was made on 02.11.2019. This Court is also of the considered opinion that all the documents filed along with the charge-sheet supporting the transportation of the liquor have not been found to be inaccurate or forged in any manner. What is alleged against the petitioners is that there was a short fall of 59 boxes of liquor in the consignment of 1600 boxes .

14] Even otherwise, it is not the case of the prosecution that any of the documents on the basis of which the liquor was being transported were doubtful in any manner, and in such circumstances, this Court finds force in the submissions as advanced by the counsel for the petitioners that no case either under Section 34(2) or under Section 420 of IPC is made out. Although, the counsel for the petitioners has drawn the attention of this Court to the proceedings/record of W.P. 2302/2020 to submit that the boxes which were missing from the consignment were being used as dustbins in the police station, and this Court has also perused the

original record of the aforesaid writ petition in which the photographs have been filed to substantiate the statement made by the counsel for the petitioners, however, no cognizance of such facts can be taken in the present petition. Be that as it may, the Supreme Court in the case of *Inder Mohan Goswami v. State of Uttaranchal*, (2007) 12 SCC 1, has held as under:-

“Scope and ambit of Courts' powers under Section 482 of Cr.P.C. :-

23. This Court in a number of cases has laid down the scope and ambit of courts' powers under Section 482 CrPC. Every High Court has inherent power to act *ex debito justitiae* to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power under Section 482 CrPC can be exercised:

(i) to give effect to an order under the Code;

(ii) to prevent abuse of the process of court, and

(iii) to otherwise secure the ends of justice.

24. Inherent powers under Section 482 CrPC though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the statute.”

(emphasis supplied)

15] For the reasons as assigned herein above in respect of the documents filed in the charge-sheet, this court has no hesitation to hold that it is a fit case to invoke the inherent powers of this court under s.482 of Cr.P.C., to further prevent the abuse of the process of court, as it would be in the interest of justice only that these proceedings are snapped here and now only. Accordingly, the

petition stands **allowed** and the charge-sheet filed against the petitioners for offences under Sections 420, 467, 468, of IPC and Section 34(2) of M.P. Excise Act, 1915 arising out of the FIR No.251/2019 registered at Police Station Nagalwadi, District-Barwani (M.P.) is hereby is **quashed**. The petitioners are discharged from the aforementioned charges. All the subsequent proceedings relating to aforementioned crime pending before the Sessions Judge Barwani in S.T. No.25 of 2020 against the petitioners are also **quashed**.

16] Having quashed the FIR, this court would be failing in its duties if the plight, indignity and despair that the petitioners were made to suffer is left unattended by this court. Reference in this regard may be had to the decision of the Supreme Court in the case of **Rini Johar(supra)**, para 27 of the same reads as under:-

“27. In the case at hand, there has been violation of Article 21 and the petitioners were compelled to face humiliation. They have been treated with an attitude of insensibility. Not only there are violation of guidelines issued in *D.K. Basu*, there are also flagrant violation of mandate of law enshrined under Section 41 and Section 41-A CrPC. The investigating officers in no circumstances can flout the law with brazen proclivity. In such a situation, the public law remedy which has been postulated in *Nilabati Behera, Sube Singh v. State of Haryana, Hardeep Singh v. State of M.P.*, comes into play. The constitutional courts taking note of suffering and humiliation are entitled to grant compensation. That has been regarded as a redeeming feature. In the case at hand, taking into consideration the totality of facts and circumstances, we think it appropriate to grant a sum of Rs 5,00,000 (Rupees five lakhs only) towards compensation to each of the petitioners to be paid by the State of M.P. within three months hence. It will be open to the State to proceed against the erring officials, if

so advised.”

(emphasis supplied)

17] It is worth mentioning here that the petitioners were arrested on 02.11.2019 and were subsequently released on bail by this Court only on 15.07.2021 in M.Cr.C. No.29973 of 2021, thus, they have been **imprisoned for a period of 1 year and 8 months** in this frivolous case lodged only at the whims and caprice of the concerned police officers. This Court is of the considered opinion that the investigation was apparently carried out with *malafide* intentions and there was no reason for the concerned police officer to apprehend the container backed by valid documents and count each and every one of 1600 boxes to come to a conclusion that there is a short fall of 59 boxes out of 1600 boxes, and this shows the deliberate attempt of the concerned police officers to falsely implicate the petitioners for ulterior motives which amounts to misfeasance, and considering the fact that the petitioners have spent more than 1 year and 8 months in jail, in clear violation of their fundamental right guaranteed under Art.21 of the Constitution, this Court, while taking note of the decision rendered by the Supreme Court in the case of **Rini Johar and Ors. Vs. State of M.P. And Ors. (supra)** wherein, **the Supreme Court has granted a compensation of Rs.5 lakhs to each of the petitioners** of the said case where they were arrested illegally and were required to spend **three weeks and seventeen days in jail** respectively, deems it appropriate to impose heavy cost on the State and thus, it is directed

that the State shall pay the petitioners, a sum of **Rs.20 lakhs (Rupees Twenty Lakhs only) each** towards compensation, to be paid by the State of M.P. within two months time and it will be open for the State Government to proceed against the erring officer, and recover the said amount from them after due process of law.

18] Petition stands *disposed of* accordingly.

(SUBODH ABHYANKAR)
JUDGE

Bahar