

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 5469 of 2018**

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PERNOD RICHARD INDIA PRIVATE LIMITED THROUGH RAJENDRA
RAMDAS DESHMUKH & ANR.

Versus
STATE OF GUJARAT & ANR.

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Appearance:

MR TARAK DAMANI(6089) for the Applicant(s) No. 1,2

MR ROHAN SHAH APP for the Respondent(s) No. 1

RULE SERVED for the Respondent(s) No. 2

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CORAM:HONOURABLE MR. JUSTICE DEVAN M. DESAI

Date : 04/10/2024

ORAL ORDER

1.1 By way of the present application under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “Cr.P.C.”), the petitioners have prayed to quash and set aside the complaint being FIR being No.3045 of 2016 dated 24.02.2016 registered before Dunga Police Station, Valsad for the offences punishable under Sections 279 and 427 of Indian Penal Code, Sections 177, 184 and 134 of the Motor Vehicles Act, 1988 Section 77(B) of the Gujarat Prohibition Act, 1949 and Rule-10 of the Gujarat Through Transport Rules, 1966, as well as consequential proceedings arising therefrom.

1.2 Considering the facts and circumstances of the case and with consent of the learned advocates for the respective



parties, this matter is taken up for final disposal forthwith. Hence, **Rule** returnable **forthwith**. Though served, none appears for original complainant. Learned Additional Public Prosecutor Mr.Rohan Shah waives service of notice of Rule on behalf of respondent – State.

2. The facts of the case, in nutshell, are as under:

2.1 The petitioner no.1 company had entered into a contract of transport on 15.04.2014 with Mansi Logistics. The petitioner no.1 is in the business of manufacturing, selling and importing of various types of alcoholic beverages including established international brands such as Chivas Regal, Ballantines, Jacobs Creek, Blenders Pride, Royal Stag etc.

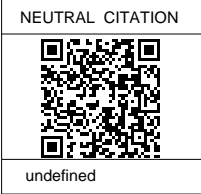
2.2 On 18.02.2016, the petitioner no.1 company instructed Manshi Logistics to provide vehicle for transport of 800 cases of Royal Stag Whiskey from Dindori, Nasik Unit to National Sales Corporation, Nani Daman. The truck bearing registration no.GJ-15-YY-8166 was transporting the articles mentioned herein above. The transporter had obtained Escort Order from Deputy Superintendent, State Excise, Nasik. Necessary pass was issued by Deputy Superintendent, State Excise for the export of IMFL by petitioner company to National Sales Corporation. The petitioner no.1 company also obtained transit pass under the provisions of Gujarat Value Added Tax Act, 2003.



2.3 On 23.02.2016, at 3:00 a.m., the said truck accidentally turned turtled at Vapi. The truck containing liquor was damaged in the accident. As the truck had entered State of Gujarat, without any escort as required to be provided and without informing Gujarat Excise Department, with a view to evade to pay required taxes, FIR being No.3045 of 2016 dated 24.02.2016 was registered before Dungra Police Station, Valsad for the offences punishable under Sections 279 and 427 of Indian Penal Code, Sections 177, 184 and 134 of the Motor Vehicles Act, 1988 Section 77(B) of the Gujarat Prohibition Act, 1949 and Rule-10 of the Gujarat Through Transport Rules, 1966.

3.1 Learned advocate for the petitioners submitted that the petitioner no.2, who has been arraigned as an accused no.2, has no role to play in the offences mentioned in the FIR. It is submitted that there is no question of evading excise duty. Reliance is placed upon a receipt issued by the Excise Inspector, Daman on 18.02.2016. It is further submitted that the transport service agreement was executed between the petitioner no.1 and Manshi Logistics on 15.04.2014 and as per the said agreement, it was the duty of the transporter to arrange for the escort and escort charges and as per the agreement, the cost to be reimbursed to the transporter.

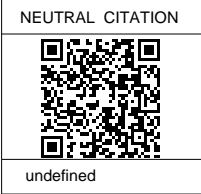
3.2 Learned advocate for the petitioners has relied upon



Rule-10 of the Gujarat Through Transport Rules, 1966 and submitted that as per Rule-10 it is for the transporter to transport consignment by arranging the excise escort on payment of necessary cost for the stamp in advance. The application has to be made to the Local Prohibition and Excise Officer of the Charge in which the place where the consignment shall first to enter by road in the State of Gujarat. It is further submitted that for the fault of transporter, petitioner no.2 cannot be held liable. It is submitted that allegations made in the FIR are general and not attracting any of the offences as mentioned in the FIR.

3.3 It is further submitted that Section 77(B) of the Gujarat Prohibition Act is not applicable as there is no willful act or omission on the part of the petitioner no.2 to contravene any rule, regulation or order made under the provisions of the Gujarat Prohibition Act, 1949. It is submitted that since the petitioner is in the business of manufacturing, selling and importing of various types of alcoholic beverages. For any negligence or willful default on the part of the transporter, the petitioner cannot be held liable for the offences mentioned in the complaint.

4. *Per contra*, learned Additional Public Prosecutor Mr.Rohan Shah has submitted that petitioner no.2 has rightly



been arraigned as co-accused with the truck driver. It is submitted that the agreement, which has been relied upon by learned advocate for the petitioners, is of no significance as the same is between the petitioner no.1 and transporter. Authorities have no knowledge as the complaint has to be investigated by the Investigating Officer. It is further submitted that only after completing the entire investigation it can be found that whether the truck was moving in the prescribed route or not. At this stage, it would be premature to quash the complaint only on the ground of no willful default on the part of the transporter in not obtaining necessary escort. It is further submitted that the role of the petitioner no.2 is yet to be investigated and hence the petition may be dismissed.

5. I have considered the submissions canvassed by learned advocates for the parties and also taken note of various documents which are placed on record. As per FIR, the truck bearing registration no. GJ-15-YY-8166 was carrying 800 cases of Royal Stag Whiskey from Dindori, Nasik Unit to National Sales Corporation, Nani Daman. While transporting the goods, on 23.02.2016, the said truck turned turtled at Vapi. Offence was registered by Dungra Police Station, Valsad. As per case of the petitioner no.1, transport service agreement was executed between the petitioner no.1 and Manshi Logistics, a transporter of transportation of goods. Clause No.3.6 of the said agreement reads as under:-



“3.6 The Transporter will be reimbursed for Toll & escort Charges will be reimbursed on actual on submission of original receipts. No claim will be entertained without the original receipts.”

The said clause pertains to reimbursement for Toll and escort charges by the petitioner to the transporter.

5.2 Rule-10 of the Gujarat Through Transport Rules, 1966 reads as follows:-

“10. Through transport by road to be under excise escort:- (1) No consignment shall be transported by road through the intervening territory of the State unless it is accompanied by the excise escort which shall be provided on payment by the transporter of the cost of the same in advance and on an application being made in this behalf the transporter to the local Prohibition and Excise Officer of the charge in which the place where the consignment shall first enter by road in the State of Gujarat is situated.

(2) xxxxx

(3) xxxx”

Sub-rule (1) of Rule 10 of the of the Gujarat Through Transport Rules, 1966 provides that no consignment shall be transported by road through the intervening territory of the State unless it is accompanied by the excise escort. The payment of the cost of excise escort shall be paid by transporter. An application has to be made by the Transporter



to the Local Prohibition and Excise Officer of the Charge in which the place where the consignment shall first enter by road in the State of Gujarat is situated.

Thus, the Rule is very clear and unambiguous. It is the responsibility of the Transporter to apply the excise escort and also has to pay for it to the concerned authority. The agreement also speaks that Transporter will be reimbursed for the escort charges on submission of actual original receipts. When the Transporter owes a duty to arrange for the excise escort, petitioners cannot be held liable for not having excise escort when the consignment first enters by road in the State of Gujarat.

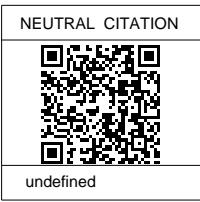
5.3 Section 77B of the Gujarat Prohibition Act, 1949 reads as follows:

“77. PENALTY FOR MISCONDUCT BY LICENSEE ETC.

Whoever, being the holder of a licence, permit, pass or authorization granted under this Act or a person in the employ of such holder or acting with his express or implied permission on his behalf

(a) xxx or

(b) willfully does or omits to do anything in contravention of any rule, regulation or order made under this Act, or

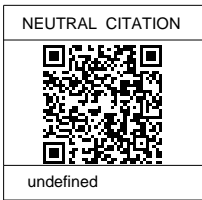


(c) {XXX}

shall, on conviction, be punished for each such offence with imprisonment for a term which may extend to {six} months, or with fine which may extend to {five hundred} rupees or with both.”

Clause (b) of Section 77 of the Gujarat Prohibition Act, 1949 envisages that if the holder of licence, permit, pass or authorization granted under the Act or a person in employ of such holder, willfully does or omits to do anything in contravention of any rule, order or regulation shall on conviction be punished for each of such offence with imprisonment for a term which may extend to six months or with fine which may extend to Rs.500/- or with both.

For invoking the said provision, *prima facie*, there has to be any willful act or omission which should surface from the allegations made in the complaint. When the FIR does not demonstrate any willful act or omission on the part of the petitioner, which is in contravention of any rule, regulation or order, it cannot be said that petitioners are the offenders under the offences mentioned in the FIR. If Rule-10 of Gujarat Through Transport Rules, 1966 is read with provisions of Section 77(B) of the Gujarat Prohibition Act, 1949, it is the Transporter, who is in willful default of not obtaining necessary excise escort while entering place where the



consignment first entered by road in the State of Gujarat.

When a specific query was put by this Court to learned Additional Public Prosecutor that whether any statement of Transporter has been recorded or not, learned Additional Public Prosecutor could not point out from the record that statement of the Transporter is recorded or not. Thus, from the record of the present petition it transpires that the statement of the Transporter is not recorded and whether the excise escort, which is mandatory requirement under Rule-10 has been applied for by the Transporter, no fault can be found with the petitioners.

5.4 In case of **State of Haryana v. Bhajan Lal**, reported in **1992 Supp (1) SCC 335**, the Apex Court has set out the categories of cases in which the inherent power under Section 482 CrPC can be exercised and held in para 102 as under:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Art. 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent



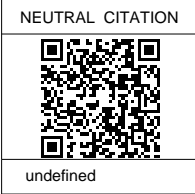
abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised :

(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.

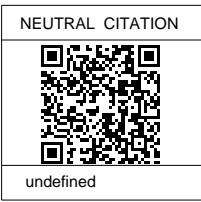
(7) Where a criminal proceeding is manifestly attended with *mala fide* and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

5.5 The scope and ambit of inherent powers of the Court



under Section 482 of the Code or the extra-ordinary power under Article 226 of the Constitution of India, now stands well defined by series of judicial pronouncements. Undoubtedly, this Court has inherent power to do real and substantial justice, or to prevent abuse of the process of the Court. At the same time, the Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power vested in the Court should not be exercised to stifle a legitimate prosecution. However, this Court can exercise its inherent power or extra-ordinary power if the Court comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court, or the ends of justice require that the proceeding ought to be quashed. Thus, I am of the considered view that the allegations in the first information report / complaint if taken at its face value and accepted in their entirety, they do not constitute the offence alleged and the chances of an ultimate conviction after full-fledged trial are bleak and continuation of criminal prosecution against the applicants accused is merely an empty formality and wastage of precious time of the Court.

5.6 Thus, in view of the above facts and circumstances and in view of the above discussion, I am of the view that the petition deserves to be allowed and the same is allowed. The FIR being No.3045 of 2016 dated 24.02.2016 registered before



Dungra Police Station, Valsad for the offences punishable under Sections 177, 184 and 134 of the Motor Vehicles Act, 1988, Section 77(B) of the Gujarat Prohibition Act, 1949 and Rule-10 of the Gujarat Through Transport Rules, 1966, is hereby quashed and set aside qua the petitioner nos.1 and 2.

6. Rule is made absolute to the aforesaid extent qua the present petitioners.

MISHRA AMIT V.

(D. M. DESAI,J)