



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2ND DAY OF FEBRUARY, 2023

BEFORE

THE HON'BLE MR JUSTICE HEMANT CHANDANGOUDAR

CRIMINAL PETITION NO. 6678 OF 2018

BETWEEN:

1. MR. VAIBHAV VERMA
S/O RAMNIWAS MUNSHIRAM VERMA
AGED ABOUT 36 YEARS
2. MR. KABEER KHOKAN BISWAS
S/O LATE KHOKAN BABU BISWAS
AGED ABOUT 35 YEARS

PETITIONERS FORMERLY AT
NO.457, 7TH MAIN ROAD
2ND CROSS, HAL 2ND STAGE, INDIRANAGAR
BENGALURU-560 038

CURRENT ADDRESS AT
201, 2ND FLOOR, SMART SQUARE COMPLEX,
100 FEET ROAD, INDIRA NAGAR II STAGE
HOYSALA NAGAR, INDIRANAGAR
BENGALURU-560 038.

...PETITIONERS

(BY SRI SANDESH J. CHOUTA, SENIOR COUNSEL FOR
SRI NARENDRA H.N., ADVOCATE)

AND:

STATE OF KARNATAKA THROUGH
THE INSPECTOR OF EXCISE
INDIRANAGAR EIB-4
BANGALORE-560 038





REPRESENTED BY THE PUBLIC PROSECUTOR
ATTACHED TO THE COURT

...RESPONDENT
(BY SRI VINAYAKA V.S., HCGP FOR RESPONDENT/STATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF THE CODE OF CRIMINAL PROCEDURE, 1973 AND ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED FIR NO.9/2018-19/03IE/030212 DATED 11.08.2018 REGISTERED BY THE INSPECTOR OF EXCISE, INDIRANAGAR EIB-4, BANGALORE AGAINST THE PETITIONER HEREIN (ANNEXURE-B) FOR THE OFFENCES U/S 11, 13(1)(a), 14(2), 15 OF KARNATAKA EXCISE ACT, 1965, P/U/S 32, 38A THEREOF, AND WHICH IS PENDING ON THE FILES OF THE C.M.M., BANGALORE IN CR.NO.9/2018 AND ALL ACTION TAKEN THEREUNDER AND FURTHER THERETO.

THIS PETITION, COMING ON FOR HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

On 11.08.2018, the Inspector of Excise, received a credible information that, a user by name Hidayat Khaleel, identified himself to be above 21 years of age, initiated a task on the dunzo mobile app to purchase from a licensed alcohol vending store and since the purchase of the alcohol is permitted to a person over the age of 21 years from a licensed store, the independent contractor in the area, Mr. Revanasiddayya G, accepted to perform the task and Mr. Revanasiddayya G. allegedly purchased the said items from Karnataka Spirit World, being the licensed third-party vendor identified by the user, and handed over the items at Sterling Apartment, Sahakar Nagar, Bengaluru, the place identified by the user as the drop-off location.



2. On 12.08.2018, the Company's personnel learnt that Mr. Revanasiddayya G., the Independent Contractor in the instant task was arrested and subsequently, the company received information that the FIR was registered for the offences under Sections 11, 13 (1) (a), 14(2) and 15 of the Karnataka Excise Act, 1965, Sections 32 & 38A thereof. On 13.08.2018, the Company was informed that the Company's Directors, the petitioners herein have also been arraigned as accused in the said case. Being aggrieved by the registration of the FIR, accused Nos. 2 and 3 are before this Court.

3. Mr. Sandesh J. Chouta, learned senior counsel for the petitioners-accused Nos. 2 & 3 submits that Dunzo Digital Private Limited is an intermediary and intermediary cannot be prosecuted for the aforesaid offences, since they are protected under Section 79 of the Information Technology Act, 2000.

4. He further submits that accused Nos.2 & 3 are the Directors of the Dunzo Digital Private Limited Company, a company incorporated under the Independent Contractor Act. The company having not been arrayed as an accused, the petitioners-accused cannot be held vicariously guilty of the above said offences. In support, reliance is placed on the decision of the Co-ordinate Bench of this Court in Crl.P.No.6595/2022 disposed of on 25.08.2022.



5. On the other hand, learned HCGP for the State would submit that, the accused No.1 transported liquor in excess of the prescribed limits by using Dunzo App of which accused Nos.2 & 3 are the Directors and as such the registration of the FIR does not warrant any interference.

6. I have considered the submissions made by the learned counsel for the parties.

7. Whether the intermediary can be prosecuted for the aforesaid offences under the provisions of law was examined by the Co-ordinate Bench of this Court in CrI.P.No.6595/2022, wherein, it was held that the petitioners therein who are intermediaries, and neither a seller nor supplier of the product in question, and could not have been prosecuted for a crime.

8. In view of the ratio enunciated by the Co-ordinate Bench of this Court, the accused Nos. 2 & 3 who are the Directors of the company intermediary cannot be prosecuted for the offences alleged against them.

9. The Hon'ble Supreme Court in the case of Sushil Sethi and Another -vs- State of Arunachal Pradesh and others, reported in (2020) 3 SCC 240 has held as follows:

"8.2. It is also required to be noted that the main allegations can be said to be against the company. The company has not been made a party. The allegations are restricted to the Managing Director and the Director of the company respectively. There are no specific



allegations against the Managing Director or even the Director. There are no allegations to constitute the vicarious liability. In *Maksud Saiyed v. State of Gujarat* [*Maksud Saiyed v. State of Gujarat*, (2008) 5 SCC 668 : (2008) 2 SCC (Cri) 692] , it is observed and held by this Court that the Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the company when the accused is the company. It is further observed and held that the vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. It is further observed that the statute indisputably must contain provision fixing such vicarious liabilities. It is further observed that even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability. In the present case, there are no such specific allegations against the appellants being Managing Director or the Director of the company respectively. Under the circumstances also, the impugned criminal proceedings are required to be quashed and set aside."

10. In the instant case, the accused Nos.2 & 3 are arrayed as the Directors of the Company, and the company having not been arraigned as an accused in the FIR, the accused Nos. 2 & 3 cannot be held vicariously guilty along with the Company. Even otherwise, there is no specific allegations as against the petitioners-accused Nos.2 & 3 so as to constitute the commission of the aforesaid offences.



11. In view of the preceding analysis, I am of the considered view, that the continuation of the criminal investigation against the petitioners-accused will be an abuse of process of law. Accordingly, I pass the following:

ORDER

- i) Criminal Petition is allowed
- ii) FIR in Crime No.9/2018-19/03IE/030212 dated 11.08.2018 registered by the Inspector of Excise, Indiranagar EIB-4, Bengaluru insofar it relates to accused Nos.2 & 3 is hereby quashed.

In view of disposal of the main petition, I.A.No.1/2022 for vacating stay does not survive for consideration and stands disposed of.

**Sd/-
JUDGE**

HR
List No.: 1 Sl No.: 71