

Waqar Ahmed Abdul Sattar Qureshi And ... vs State Of Mah. Thr. Ps Ner Parsopant ... on 5 April, 2022

Author: Amit B. Borkar

Bench: V. M. Deshpande, Amit B. Borkar

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9-apl-4

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

CRIMINAL APPLICATION (APL) NO. 420 OF 2022

1. Waqar Ahmed Abdul Sattar Qureshi,
Aged about 34 years, Occ. Business,
R/o. Walgaon Road, Amravati.
2. Mohd Faizan Mohd Idris,
Aged about 32 years, Occ. Business,
R/o. Anjangaon Surji, Amravati.

. . . APPLICANT

...V E R S U S..

1. State of Maharashtra through
Police Station Ner Parsopant,
Yavatmal.
2. Gopal Vinayakrao Mahore,
R/o. Food Safety Officer,
Food and Drug Administration,
Yavatmal.

. . . NON-APPLICANTS

Shri Mir Nagman Ali, Advocate for applicants.
Shri M. K. Pathan, APP for non-applicant/State.

CORAM :- V. M. DESHPANDE AND
AMIT B. BORKAR, JJ.

DATED :- 05.04.2022

JUDGMENT (PER : AMIT B. BORKAR, J.) :

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1. Heard.

2. Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2 9-apl-420-22.odt

3. By this application under Section 482 of the Code of Criminal Procedure the applicants are challenging registration of First Information Report (FIR) No. 17/2022 registered with the non-applicant no. 1-Police Station for the offence punishable under Sections 328, 272, 273, 188, 34 of the Indian Penal Code read with Section 26(2)(i), 27(3)(e), 30(2)(a) and 59 of the Food Safety and Standards Act, 2006.

4. The FIR came to be registered against the applicants with accusations that the non-applicant no. 2, who is Food Safety Officer, on secret information conducted raid alongwith Police and seized prohibited food articles like banned scented tobacco and other substance worth 6,42,020/- allegedly transported through Eicher 6,42,020/- allegedly transported through Eicher Truck bearing Registration No. MH-28/AB-7092 and Bolero Pick-up Jeep bearing Registration No. MH-30/AB-4782. The non-applicant no. 2 seized the entire articles and apprehended the applicants. The applicants have therefore challenged registration of the FIR by filing the present application.

5. We have heard Shri Mir Nagman Ali, learned Advocate for the applicants and Shri M.K. Pathan, learned APP for the non- applicant/State.

3 9-apl-420-22.odt

6. Learned Advocate for the applicants submitted that no offence could be registered under the provisions of the Indian Penal Code. It is submitted that the essential ingredients of the offences alleged against the applicants are not made out even if the allegations in the FIR are taken at their face value. It is alleged that there is no allegation that the intoxicating substance had been administered to an individual.

7. Learned APP submitted that since the articles found in the applicants' possession are banned in the State of Maharashtra, the offences were registered against the applicants. The applicants thereafter challenged the registration of the FIR by filing these application. It is stated that the Food Safety and Standards Act is a special law, and the Indian Penal Code is a general law, but the offences can be registered under both the Acts. Reliance is placed on the judgment of the Hon'ble Apex Court in the case of State of Maharashtra vs. Sayyad Hassan Sayyad Subhan and others in Criminal Appeal No. 1195/2018 in support of the contention that there is no bar to a trial or conviction of an offender under two different enactments. Reliance is also placed on the un-reported judgment of the Co-ordinate Bench of this Court at Aurangabad Bench dated 16/10/2018 in Criminal Application No. 4968/2016, wherein the Co-ordinate Bench of this Court repealed the challenge to the registration of the FIR on 4 9-apl-420-22.odt the similar grounds. It is stated that the material collected by the answering non-applicant is sufficient to bring home the guilt in the present crime and therefore prayed for dismissal of the application. Learned APP placed reliance on the judgments of the Co-ordinate Bench of this Court in Criminal Application (APL) No. 444/2014 (Sunil Gajawani vs. State of Maharashtra & Anr.) and other connected matters wherein this Court refused to interfere with the registration of the offences and permitted the Investigating Agency to

file the charge- sheet. Furthermore, he placed reliance on the judgment in the case of Mohammad Yamin Naeem Mohammad & Ors. vs. State of Maharashtra & Ors. [2021 Cr.L.J. 1811]. He, therefore, submitted that in view of the judgment of the Hon'ble Apex Court in the case of Sayyad Hassan (supra) and other judgments of the Co-ordinate Bench of this Court in Criminal Application No. 4968/2016 & Criminal Application (APL) No. 444/2014 and the judgment in the case of Mohammad Yamin (supra), no interference is called for.

8. We have carefully analyzed the allegations in the FIR. In substance, the allegations against the applicants are that they were found to be in possession of the material containing Pan Masala, Scented Tobacco, a prohibited substance in the State of Maharashtra.

5 9-apl-420-22.odt

9. In our opinion, the Co-ordinate Bench of this Court in Mohammad Yamin (supra) was considering the challenge to the similar FIRs containing similar allegations, and the Co-ordinate Bench of this Court repelled the challenge by observing in Paragraphs 49 & 50 as under:-

"49. Mr. Bhangde, learned Senior Counsel, also attacks the charging of the petitioners of offences under the Penal Code, 1860, namely, those under Sections 188, 272, 273 and 328 of the I.P.C. In respect of his contention that the petitioners could not have been charged with by an offence under Section 328 of I.P.C., he contends that the ingredients thereof as are required to be fulfilled by the requirements as spelt out from the language of Section 328 of I.P.C. have not been made out. To buttress his submission he has relied upon Anand Ramdhani Chaurasia (supra) and Nilesh Narayan Sanghvi (supra). Anand Ramdhani Chaurasia (supra) was a case for quashing the offence under Section 328 of I.P.C., wherein, on the facts of the case, it was held that since the FIR did not disclose the ingredients of Section 328 of I.P.C., the same was quashed. It is, however, worthwhile to note, though not disclosed by Mr. Bhangde, learned Senior Counsel appearing for the petitioners, but as contended by Shri Ashirgade, learned Additional Public Prosecutor, that the judgment in Anand Ramdhani Chaurasia (supra), was stayed by the Apex Court in S.L.P. (Cri) No. 004101/2020, which was filed on 28/2/2020 and registered on 1/9/2020, by an order dated 31/8/2020. In Nilesh Narayan Sanghvi (supra) the issue involved, was that, though the contraband articles such as Gutkha, Pan Masala, scented tobacco were found in the vehicle of the applicant, the offence under Section 328 of I.P.C. was not attracted, and the FIR registered for the said offence was sought to be quashed under Section 482 Cr.P.C. The Court relying upon the judgment in the case of Anand Ramdhani Chaurasia (supra), held that mere transportation, without any further action, on an apprehension that the contraband goods would be sold in the market and would be bought and consumed by a person, was too far fetched a consequence of an act of "administering", or "causing to be taken" and mere transportation could not be construed as an attempt to commit an offence under Section 328 of I.P.C.

and had quashed the FIR in respect of the offence under Section 328 of I.P.C. alone. The Court in Nilesh Narayan Sanghvi (supra), which was decided on 9/9/2020, it clearly appears, was not informed that the judgment in Anand Ramdhani Chaurasia (supra), which was being relied upon, stood stayed by an order dated 31/8/2020, by the Hon'ble Apex Court. It is needless to state here that when a Counsel places 6 9-apl-420-22.odt reliance upon a judgment of the High Court, it is the solemn and obligatory duty of the Counsel, to the Court, to inform the position as to whether the judgment was carried to the Apex Court, and if so, the fate of the same, as on the date of deciding of the matter by the High Court. It is not permissible for a Counsel, to merely place reliance upon a judgment in support of his case and to leave it to the Court, to make efforts to ascertain whether any challenge was laid to it, before the Apex Court and to ascertain the fate of such a challenge. The Counsel would be failing in his duty both as a Counsel and as an officer of the Court, if he does so, as by citing the judgment, he is calling upon the Court, to not only to assume its correctness, but is also inviting the Court to place reliance upon what has been stated therein and render judgment in consonance thereof, that too on a premise that the same had attained finality, in absence of any further challenge.

50. That there is an order as contemplated by Section 188 of I.P.C. cannot be controverted in light of the impugned order dated 15/7/2020. The Chemical Analyser's report indicates the presence of magnesium carbonate and nicotine in the seized goods (Section 272 of I.P.C.), both of which are prohibited and are also indicative causes of cancer. The word 'noxious', means harmful (Webster), harmful to health, injurious, unwholesome, corruptive (Blacks law dictionary) or repugnant to human use. It cannot be disputed that both magnesium carbonate and nicotine are harmful to human health (see : hazardous properties and toxicity of both) (Section 273 of I.P.C.). The only question is whether the goods were sold, offered or exposed for sale, as food (Section 273 of I.P.C.) or were administered with an intent to cause hurt (Section 328 of I.P.C.). Obviously, due to the various studies made, the advertisements as issued by the Government, the films shown in Cinema halls, regarding the harmful effects of tobacco and tobacco products, it no longer can be said that any person, would now be oblivious as to the harmful effects of tobacco and tobacco products. In spite of knowing about the harmful effects, if a person transports such products, from one place to another, could it be said that such person was unaware that the same was not for sale? The word 'sale', would be applicable to a manufacturer, distributor, dealer, retailer or the shop-keeper, each of whom, performs the activity of sale, well knowing that such sale would be for human consumption. Instead of using the easier and shortest route from the point of origin to the point of destination, the use of a circuitous route, would entitle the authorities to draw an adverse inference, that the goods were intended for sale within the State, through which they were being transported and the case was not that of an inter-State transport. Too technical a meaning to the language of the relevant sections, may not be called for, considering the changing situation. The law is not static, but is a live concept, keeping in pace with the changes in the society as well as evolving technology. To fetter the law, to its literal sense or meaning, would not be apt, rather, such an 7 9-apl-420-22.odt approach would sound its death knell. The Courts must also be alive to such changes and apply the law, accordingly."

10. We also agree with the learned APP that the Co-ordinate Bench of this Court at Aurangabad Bench in Criminal Application No. 4968/2016 has repelled the similar challenge as regards the FIR containing similar allegations. Therefore, in our view, whether the substance seized by the

Authorities comes within the purview of Section 328 of the Indian Penal Code and whether the allegations against the applicants are proved or not, the Investigating Agency needs to be given an opportunity to prove their case in the trial.

11. Therefore, we are satisfied that prima-facie, the essential ingredients of the offences alleged against the applicants, are fulfilled.

12. The Criminal Application is dismissed. Pending application, if any, stands disposed of accordingly.

13. It is made clear that the learned Trial Court shall not be influenced by the observations made in this order, and it shall be open for the applicants to raise all contentions before the learned Trial Court as permissible in law.

JAISWAL RAJNESH RAJNESH Date:

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RR Jaiswal

(AMIT B. BORKAR, J.)

(V. M. DESH)