

(2016) 01 KAR CK 0023
In the Karnataka High Court
Case No : Criminal Petition No. 201172/2015

Basvaraj and Others

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 04-01-2016

Acts Referred:

Karnataka Excise Act, 1965 — Section 34

Karnataka Police Act, 1963 — Section 79, Section 79(a), Section 80

Citation : (2016) 01 KAR CK 0023

Hon'ble Judges : Aravind Kumar, J.

Bench : Single Bench

Advocate : Sanjay A. Patil, Advocate, for the Appellant; Prakash Yeli, Addl. SPP, for the Respondent

Final Decision : Allowed

Judgement

Aravind Kumar, J.—1. Though the matter is listed for admission, with the consent of learned Advocate appearing for the parties, it is taken up of for final disposal.

2. Petitioners have been arrayed as accused Nos. 1 to 10 in Crime No. 173/2015 registered by Gandhi Gunj Police Station for the offences punishable under Section 34 of Karnataka Excise Act, 1965 (for short "Exercise Act") and Sections 79 and 80 of Karnataka Police Act, 1963 (for short "Police Act"). They are seeking for quashing of FIR inter alia contending that petitioners are the members of a registered Recreation Club and as per the Memorandum of Articles of said club which is registered under Karnataka Societies Act said club they were apprehended by jurisdictional police on the ground they were found gambling in the Club and possessing liquor bottles without licence. It is contended that seizure panchanama does not disclose about petitioners having indulged in gambling or playing cards and hence Sections 79 and 80 of the Police Act is not attracted and as such if prosecution is proceeded with it would result in abuse of process of law. It is further contended that seizure panchanama also does not disclose about petitioners consuming liquor/alcohol in the club premises and as

such Sections 34 of the Excise Act is also not attracted.

3. Sri Sanjay A. Patil, learned Advocate appearing for petitioners would reiterate the grounds urged in the petition.

4. Per contra, Sri Prakash Yeli, learned Additional SPP would submit that petitioners had not only indulged in playing cards but had also consumed alcohol in club premises which is prohibited under Excise Act and as such initiation of proceedings by the jurisdictional police does not amount to abuse of process of law. Hence, he prays for rejection of the petition.

5. Having heard the learned Advocates appearing for parties and after careful consideration of the material on record, it would disclose that jurisdictional police namely Gandhi Gunj police have visited Recreation Club, New Adarsh Colony, Bidar on 22.08.2015 at about 7.30 p.m. and found that petitioners were playing cards. Seizure panchanama which is produced along with the petition dated 22.08.2015 does not indicate as to the nature of offence which was committed by the petitioners. There is no dispute to the fact that licence granted to Recreation Club entitle its members to take part in playing card game and per se playing cards would not be an offence. Infact Article 4(5) of the Memorandum of Association of club, the copy of which is made available by learned Advocate for petitioners would clearly disclose that members of the club are entitled to play cards for recreation purposes within the premises of club. Section 79 of Police Act would indicate that if ingredients prescribed under Section 79(a) to (d) are obtained in the facts of a particular case and in such event persons who keeps such gaming without express permission would be liable to be punished and not otherwise. Under Section 79 for the first offence, the punishment is imprisonment of not less than three months and fine of Rs. 500/-; for second offence punishment is imprisonment of not less than six months and fine of Rs. 500/-; and for third and subsequent offence, punishment would be imprisonment of not less than nine months and fine of Rs. 1000/-. Section 80 of the Police Act would indicate whoever is found in any common gaming house gaming or present for the purpose of gaming shall, on conviction, be punished with imprisonment which may extend to one year and with fine as envisaged under Section 79(a) to (d).

6. Thus, prima facie prosecution has to establish that necessary ingredients of Sections 79 and 80 of Police Act are attracted. Keeping these two provisions in mind, when facts on hand are to be examined. It would clearly indicate from the spot mahazar that it does not disclose as to the nature of the game which petitioners had indulged when they have apprehended so as to attract Sections 79 and 80 of Police Act. In view of the fact that articles of the association of the said club provides or enable the members to indulge themselves in playing cards, this Court is of the considered view that Sections 79 and 80 of Police Act are not attracted to the facts of the present case.

7. Insofar as invoking Section 34 of Excise Act by the prosecution is concerned, it

does not detain this Court to reject the contention of the prosecution, inasmuch as, Section 34 of Excise Act would clearly indicate that possession of quantity of intoxicant in illegal possession would alone attract said provision and in the instant case the seizure mahazar does not indicate that liquor/intoxicant found in the custody of petitioners exceeded the quantity to which an individual would be entitled to retain as prescribed under Rule 21 of Karnataka Excise (Possession, Transport, Import and Export of Intoxicants) Rules, 1967. A bare perusal of Rule 21 would clearly indicate that permit or licence is not required for possession or transport of Brandy, Whisky, Gin, Rum, Milk-Punch and such other liquors manufactured in Karnataka State excluding foreign liquors if it is to a extent of 4.6 liters.

8. In the instant case, seizure panchanama would clearly indicate that from each of the petitioners what has been seized is 750 milliliter bottles i.e., totally four bottles which does not exceed the prescribed limit. In that view of matter, permitting the prosecution to proceed with the matter would amount to abuse of process of law and it would not subserve the ends of justice and as such applying the principles laid down by the Hon"ble Apex Court reported in AIR 2008 SCW 6901, this Court is of the considered view that petitioners are entitled to the relief sought namely quashing of the proceedings.

Accordingly, petition is allowed. FIR registered in Crime No. 173/2015 dated 22.08.2015 by the Gandhi Gunj Police Station against the petitioners for the offences punishable under Section 34 of Excise Act and Sections 79 and 80 of Police Act are hereby quashed.