
(2006) 07 AP CK 0022

In the Andhra Pradesh High Court

Case No : WA No's. 1664 and 1668 of 2003

Commissioner of Prohibition and Excise and Others

APPELLANT

Vs

Balaji Traders

RESPONDENT

Date of Decision : 27-07-2006

Acts Referred:

Andhra Pradesh Excise Act, 1968 — Section 12, 13, 13(1), 14, 15
Andhra Pradesh Motor Vehicles Rules, 1989 — Rule 194
Constitution of India, 1950 — Article 19(1), 226, 227, 47
Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 156(1), 173, 482, 561A
Industries (Development and Regulation) Act, 1951 — Section 18
Penal Code, 1860 (IPC) — Section 109, 114, 120B, 420

Citation : (2006) 6 ALD 63

Hon'ble Judges : G.S. Singhvi, C.J.;G.V. Seethapathy, J

Bench : Division Bench

Advocate : Government Pleader, for the Appellant; A. Prabhakar Rao, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Singhvi, C.J.—The ambit and reach of the High Court's inherent powers u/s 482 of the Code of Criminal Procedure, 1973 (for short, "the Cr. P.C.") to pass appropriate orders to give effect to any order made under the Cr. P.C. or to prevent abuse of the process of any Court or otherwise to secure the ends of justice have become subject-matter of adjudication in several cases. In R.P. Kapur Vs. The State of Punjab, , the Supreme Court considered the question whether in exercise of its power u/s 561A of the Code of Criminal Procedure, 1898 (Section 482 Cr. P.C. is pari materia to Section 561A of the 1898 Code), the High Court could quash criminal proceedings registered against the appellant who along with his mother-in-law was accused of committing offences under Sections 420, 109, 114 and 120B of the Indian Penal Code. The appellant unsuccessfully filed a petition in the Punjab High Court for quashing the investigating of the First Information Report (FIR) registered against him and

then filed appeal before the Supreme Court. While confirming the High Court's order, which had refused to quash the report submitted by the police u/s 173 Cr. P.C. the Supreme Court laid down the following proposition:

The inherent power of High Court u/s 561A, Criminal P.C. cannot be exercised in regard to matters specifically covered by the other provisions of the Code. The inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any Court or otherwise to secure the ends of justice. Ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction.

2. The Supreme Court then carved out the following categories of cases in which the inherent jurisdiction could be exercised by the High Court:

(i) Where it manifestly appears that there is a legal bar against the institution or continuance of the criminal proceedings in respect of the offences alleged. Absence of the requisite sanction may, for instance, furnish cases under this category;

(ii) Where the allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the First Information Report to decide whether the offence alleged is disclosed or not;

(iii) Where the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or the evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction u/s 561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial Magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained.

3. In *State of Haryana v. Bajan Lal* 1992 Suppl. (1) SCC 335, the Supreme Court considered the scope of the High Court's power u/s 482 of Cr. P.C. and Article 226 of the Constitution to quash the FIR registered against the respondent, referred to several judicial precedents including those of *R.P. Kapoor v. State of Punjab* (supra), *State of Bihar and Another Vs. J.A.C. Saldanha and Others*, and *State of West Bengal and Others Vs. Swapan Kumar Guha and Others*, , and

ruled that the High Court should not embark upon an enquiry into the merits and demerits of the allegations and quash the proceedings without allowing the investigating agency to complete its task. The Supreme Court also identified the cases in which power under Article 226 of the Constitution or Section 482 Cr. P.C. could be used for quashing the proceedings. These are:

- (1). Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
- (2). Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
- (3). Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
- (4). Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.
- (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 Act concerned (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 Act concerned, 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.

4. In *State of Bihar and Another Vs. P.P. Sharma, IAS and Another*, a two Judges Bench of the Supreme Court comprising of Kuldeep Sharma and K. Ramaswamy, JJ., in their separate but concurring opinion disapproved judicial intervention in the investigation of criminal cases. Kuldeep Singh, J., expressed his opinion in the following words:

When the information is lodged at the police station and an offence is registered, the mala fides of the information would be of secondary importance. It is the material collected during the investigation which decides the fate of the accused person. The question of mala fide exercise of power assumes significance only when the criminal prosecution is initiated on extraneous considerations and for

an unauthorized purpose.

K. Ramaswamy, J., observed as under:

Entertaining the writ petitions against charge-sheet and considering the matter on merit on the guise of prima facie evidence to stand an accused for trial amounts to pre-trial of a criminal trial under Articles 226 and 227 even before the competent Magistrate or the Sessions Court takes cognizance of the offence. The charge-sheet and the evidence placed in support thereof from the base to take or refuse to take cognizance by the competent Court.

Expeditious trial of a criminal case is the cardinal rule. Delay feeds injustice to social order and entertaining writ petitions would encourage to delay the trial by diverse tricks. It is not to suggest that under no circumstances a writ petition should be entertained. But an accused with a view to delay the trial, resorts to writ proceedings, raises several contentions including one on merit and have the proceedings kept pending. The result would be that the people would lose faith in the efficacy of rule of law.

5. In large number of other judgments, the Supreme Court has repeatedly cautioned the High Courts against entertaining of the petitions filed under Article 226 of the Constitution or Section 482 Cr. P.C. for quashing the FIR or complaint and observed that the judicial process should not be allowed to be used for frustrating the investigation of crimes and prosecution of those who are accused of committing crimes. We do not want to burden this judgment with plethora of judicial precedents, but deem it proper to mention a few. In *State of Maharashtra and others Vs. Ishwar Piraji Kalpatri and others*, , the Supreme Court held that if a prima facie case is made out on the basis of allegations made in the complaint, then the High Court cannot quash the proceedings on the ground of mala fides or animus of the complainant or prosecution.

6. In *State of Karnataka Vs. M. Devendrappa and Another*, , the Supreme Court recognized the necessity of protecting the innocent citizens against harassment caused due to registration of frivolous criminal cases, but also emphasized that the High Court should exercise judicial restraint and avoid interlocutory interventions in the investigation and trial of criminal cases. The propositions laid down in that case are as under:

(1) It is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction u/s 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into

consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The inherent power should not be exercised to stifle a legitimate prosecution.

(2). The High Court being the highest Court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. Court must be careful to see that its decision in exercise of this power is based on sound principles. It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with.

(3). In a proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers u/s 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that even there would be no justification for interference by the High Court.

(4). When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in Court which decides the fate of the accused person. The allegation of mala fides against the informant is of no consequence and cannot be itself be the basis for quashing the proceedings.

7. In A.V. Mohan Rao and Another Vs. M. Kishan Rao and Another, , the Supreme Court considered the correctness of order passed by this Court refusing to quash the summons issued against the appellants by the Special Judge for Economic Offences, Hyderabad. The facts of that case shows that respondent No. 1 filed a complaint in the Court of Special Judge, Economic Offences at Hyderabad with

the allegation that accused persons by making false, deceptive and misleading statements and by suppressing facts induced various persons to pay them money for purchase of shares of the Power Company; raised millions of dollars from Non-Resident Indians (NRIs); siphoned off the money into bogus companies exclusively owned by them and purchased shares of the Power Company in India in the names of bogus offshore companies owned and controlled by them. According to the complainant, all this came to his notice when some of the prospective NRI investors made correspondence with the Power Company demanding share certificates for which they had paid substantial amounts to the accused. The complainant alleged that the accused had committed fraud on the Power Company in whose name they collected money and invested the same in their own companies. The Special Judge for Economic Offences, Hyderabad issued summons to the accused persons requiring them to appear before the Court. On receipt of the summons, the appellants filed petition u/s 482 Cr. P.C. This Court refused to quash the proceedings. While approving the order of the High Court, the Supreme Court referred to the earlier judgments in *State of Bihar Vs. Murad Ali Khan and Others*, *State of Haryana v. Bhajan Lal* (supra), *Shri Mahavir Prashad Gupta and Another Vs. State of National Capital Territory of Delhi and Others*, and held:

Reading of the complain petition and the materials produced by the complainant with it in the light of provisions in the aforementioned sections, it cannot be said that the allegations made in the complaint taken in entirety do not make out, even prima facie, any of the offences alleged in the complaint petition. We refrain from discussing the merits of the case further since any observation in that regard may affect one party or the other. The allegations made are serious in nature and relate to the Power Company registered under the Act having its head office in this country. Whether the appellants were or were not citizens of India at the time of commission of the offences alleged and whether the offences alleged were or were not committed in this country, are questions to be considered on the basis of the evidence to be placed before the Court at the trial of the case. The questions raised are of involved nature, determination of which requires enquiry into facts. Such questions cannot be considered at the preliminary stage for the purpose of quashing the complaint and the proceeding initiated on its basis.

8. In *State of Orissa and Another Vs. Saroj Kumar Sahoo*, the Supreme Court reviewed various judicial precedents on the subject and laid down the following propositions:

(1). The exercise of power u/s 482 Cr. P.C. is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of Cr. P.C. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under Cr. P.C., (ii) to prevent abuse of the process of Court, and (iii) to otherwise secure the ends of justice. It

is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise.

(2). While exercising the powers u/s 482 Cr. P.C. the High Court does not function as a Court of appeal or revision. Inherent jurisdiction under the section, though wide, has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone the Courts exist. Authority of the Court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the Court has the power to prevent abuse. It would be an abuse of process of the Court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers the Court would be justified to quash any proceeding if it finds that initiation/ continuance of it amounts to abuse of the process of Court or quashing of these proceedings would otherwise serve the ends of justice.

(3). The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest Court of a State should normally refrain from giving a *prima facie* decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which such power can be exercised can be laid down.

9. The ratio of the above noted judgments is that in exercise of its powers under Article 226 of the Constitution or Section 482 of Cr. P.C. the High Court should be extremely slow to interfere with the investigation and/or trial of criminal cases and should not stall the investigation and/or prosecution except when it is convinced beyond any manner of doubt that the FIR does not disclose commission of any offence or that the allegations contained in the FIR do not constitute any cognizable offence or that the prosecution is barred by law. In dealing with such cases, the High Court has to bear in mind that judicial intervention at the threshold of the legal process initiated against a person accused of committing offence is highly detrimental to the larger public and societal interest. The people and the society have the right to see that those committing offences either against an individual or the society are expeditiously brought to trial and, if found guilty, adequately punished. Therefore, while deciding a petition filed under Article 226 of the Constitution or Section 482 Cr. P.C. for quashing the FIR or complaint or restraining the Competent Authority from investigating the allegations contained in the FIR or complaint or for stalling the trial of the case, the High Court should be extremely careful and circumspect. If the allegations contained in the FIR or complaint discloses commission of some crime, then the High Court must keep its hands off and allow the Investigating

Agency to complete the investigation without any fetter. The High Court should not go into the merits and demerits of the allegations simply because the petitioner alleges malus animus against the author of the FIR or the complainant. The High Court must also refrain from making imaginary journey in the realm of possible harassment which may be caused to the petitioner on account of investigation of the FIR or complaint. Such a course will result in miscarriage of justice and would encourage those accused of committing crimes to repeat the same. Interim orders passed by the High Court in such matters, as a matter of course, have great adverse impact on the society. Those accused of committing crimes get emboldened and majority of citizens are forced to think that the judicial process can be used and abused by the law breakers to their advantage.

10. In the above backdrop, we shall now decide these appeals filled by the Commissioner of Prohibition and Excise, Andhra Pradesh, and two others for setting aside order dated 26-8-2003 passed by the learned Single Judge in Writ Petition Nos.5083 and 7335 of 2003 whereby he quashed the proceedings of Crime No. 177/ 2002-03 and Crime No. 1/2003-04 registered under Sections 13(f) and 34(e) of the Andhra Pradesh Excise Act, 1968 (for short, "the Act").

11. Sri Balaji Traders (respondent in Writ Appeal No. 1664 of 2003) is a proprietary concern and Shri M. Ram (respondent No. 1 in Writ Appeal No. 1668 of 2003) is its proprietor. Kishan Singh (respondent No. 2 in Writ Appeal No. 1668 of 2003) is the owner of vehicle bearing No. AP-10-T-9505. Sri Balaji Traders is said to be engaged in the business of trading in molasses. It is staid to be purchasing molasses from various sugar factories and selling the same to purchasers of various categories. On 10-3-2003, the Station House Officer, Prohibition and Excise, Patancheru, on receipt of information that molasses were being illegally transported to liquor manufacturers at Dhoolpet in tanker bearing No. AP-9U-465, intercepted the vehicle at Toll Tax Gate, Rudraram Village, Patancheru Mandal. This was done in the presence of two witnesses, namely, Sarvasri G. Ramalingam and M. Bikshapathy. The driver of the tanker namely, Mohd. Ismail S/o. Mohammed Ali, resident of Tappachabutra, near Naseeb Function Hall, Hyderabad disclosed that 15 Mts., of molasses were being taken to Dhoolpet for being handed over to I.D. liquor manufactures. Thereupon, Crime No. 177/2002-03 was registered under Sections 13(f) and 34(e) of the Act and a panchanama was prepared by Prohibition and Excise Inspector, SDTF, Sanga Reddy. The same was signed by both the witnesses. The relevant extracts of the crime and occurrence report along with panchanama read as under:

Brief particulars of the case are that on 10-3-2003 while conducting route watch Tolltaxigate at Rudraram, stopped tanker bearing No. AP 09U 465 and detected at about (15) metrictonnes of water molasses. Drawn samples and arrested A1 and A2 under cover of panchanama. The original case papers along with samples and accused persons are produced before Hon"ble Court. The charge-sheet will be submitted on completion of investigation.

Panchanama Recorded Before

1. Sri I. Moses Roy, P & EI, SDTF, Sanga Reddy, Medak District.
2. Sri A. Omkaram, P & EI, SHO, Patancheru, Medak District.
3. Sri M. Vishnu Murthy, P & ESI, SHO Patancheru, Medak District.

Place of Offence : At Toll Tax Gate, Rudraram (V), Patancheru Mandal, Medak District.

Date : 10-3-2003 at about 4-00 a.m.

S.No. Name of Panch Father's Age Caste Profession Residence Name Godda Kistaiah 50 yrs. Mudiraj Village Rudraram Meedi servant Ramalingam Manne Kistaiah 20 yrs. Mudiraj Village Rudraram Bikshapathy servant We the above mentioned panchas at the instance of the Prohibition and Excise Officer, presented ourselves at Toll Tax Gate of Rudraram (V), Patancheru Mandal, Medak District and the officers informed that they have got specific and reliable information with regard to the illegal transportation of Molasses from Sadasivpet to Dhoolpet of Hyderabad in a tanker bearing No. AP9U-465. Then the panch witness agreed to act as panchas and kept the route watch at Toll Tax Gate, Rudraram (V), Patancheru Mandal, Medak District. In the meanwhile, one Tanker bearing NoAP9U-465 was coming from Sanga Reddy side towards Patancheru. Then the officers stopped the said vehicle and found the tanker No. as AP9U-465 which is tallying with that of the number received by the officers and we found two persons in the Cabin of the said tanker. The driver of the tanker revealed his name as Sri Mohd. Ismail, S/o. Mohd. Ali, aged about 40 years and driver of the said tanker, Caste Muslim, R/o. Tappachabutra, near Naseeb Function Hall, Hyderabad. Working from 4 to 5 years on monthly salary of Rs. 1000-00. The other person, who was sitting beside the driver revealed his name as Motadi Shanker, S/o. Ramchander, age at about 35 years, Caste : Lodhi, Occupation : Business and also he revealed that he is the relative of brother of Sri M. Ram, the owner of M/s. Balaji Traders, Hyderabad, whose Molasses trading licence were cancelled, R/o. H. No. 13/I/466, Mangalhat, Doodkhana. Then the officers prepared and served search memo to the above two persons. Then the officer searched the tanker in one presence and found that there is only one compartment and wherein it was about 15 MTS of water Molasses approximately. Then on interrogation, the driver of the said tanker revealed that as per the instructions and instigation of Sri M. Ram, the owner of M/s. Balaji Traders, whose Molasses trading licence was cancelled and also as per the instructions of Sri Shanker, who was sitting beside the driver, himself and Sri Shanker went to Shiv Shakti Sugar Industries at Maddikunta Village, Sadasivpet Mandal, Medak District and loaded the above water Molasses on 9-3-2003 and transporting the same to M/s. Balaji Traders, Hyderabad and further the driver disclosed that the water molasses is one of raw materials for preparation of I.D. liquor at Dhoolpet of Hyderabad. On further interrogation, he revealed that the vehicle belongs to Sri Kishan Singh, S/o. Brijlal Singh. He is working as Driver for the vehicle since last few years. As per the instructions of Sri Kishan Singh, the owner of the said

vehicle, Sri M Ram, S/o. Yerrappa, age 35 years, who is the namesake licensee of M/s. Balaji Traders, whose molasses trading licence has been cancelled by the Commercial Tax Department, and Sri Dhanraj Singh, Alias Papalal, S/o. Balaji Singh, age about 46 years, R/o. Doodkhan, Upper Dhoolpet. He further stated that Sri Dhanraj Singh is the de facto owner of M/s. Balaji Traders and main person in the racket of bringing molasses from different Khandasari Units of Medak District and supplying it to the I.D. liquor manufacturers in Medak, Ranga Reddy and Dhoolpet of Hyderabad. He further revealed that Sri Kishan Singh is the active partner in this molasses business. They purchased molasses at the rate about Rs. 1000-00 per M.T. (Rs. one thousand) and sell to the I.D. Liquor manufacturers at a rate of Rs. 7000-00 per M.T. (Rs. seven thousand) on questioning, where he is taking molasses, he has stated that he will take the tanker to Lakdi-ka-tall Dhoolpet, where the I.D. Distillers will be waiting for arrival of the vehicle. The water molasses will be disturbed on credit basis to I.D. Liquor manufacturers. On questioning, why the trading licence of M/s. Balaji Traders cancelled, he stated that it was cancelled because of enquiry conducted by the Excise and Commercial Tax Departments and a case was booked against M/s. Balaji Traders in June 2001 for supplying molasses to I.D. liquor manufacturers and for indulging in illicit distillation. The Commercial Tax Department cancelled the licence as there are no users units of molasses any where in Dhoolpet and the accounts shown by Sri M. Ram and Dhanraj Singh were found to be 60 gms. On questioning whether molasses is used for any other purpose, the driver stated that molasses used only for I.D. liquor manufacturing and there is no other use. Then the officers recorded separate confessional panchanamas of the above two persons separately. Then basing on the confession made by the above persons, the officers seized the water molasses (raw materials) as the above persons failed to produce any valid transmit for transportation of the above contraband. Further the driver produced only the following documents:

(1). From P.P.C.C. Rule 194(iv) of the A.P. Motor Vehicles Rules, 1989 issued by the Assistant Secretary. Regional Transport Authority, Hyderabad, West Zone on dated 4-9-2002 in favour of Kishan Singh S/o. Brijlal Singh, R/o. 13-1-5/9/5, Hyderabad District, Hyderabad, A.P. to Transport all kinds of goods except prohibited goods in tanker bearing No. AP9U 465.

(2) Certificate of Insurance of goods vide policy No. 610100/31/02/1446 issued by the New India Assurance Corporation Limited in favour of Sri Kishan Singh for his owned vehicle insured i.e., AP09U-465 make - Ashok Leyland year - 1987 - Chasis No. 1 169058 Engine No. 185950 Gross vehicle weight 16200, with effective date of commencement of Insurance from 28-8-2002 to 27-8-2003.

A separate list of seized Articles is served to the accused.

The officers roughly estimated the quantity of water molasses as around 15 MTS being one of the raw material for illicit destination of I.D. liquor along with the other raw materials i.e. Ammonium Sulphate and black jaggery.

On questioning specifically by the officers, whether the molasses is meant for any other legitimate purpose other than supplying to I.D. liquor manufacturers, the said driver stated that he is taking the water molasses to Dhoolpet of Hyderabad only and it is meant for the purpose of I.D. liquor manufacturing only and it is not needed nor used by anybody in that locality.

Then the officers informed nor it is established that the water molasses meant for manufacturing I.D. liquor only. Hence, it is an offence to transport and supply water molasses (raw material) for I.D. liquor manufacturing. Hence, the tanker and said water molasses are liable for seizure in view of the recent Full Bench Judgment of the Hon'ble High Court in W.P. No. 3 54/2001 dated 12-11-2001 and Sections 13(f) and 34(e) of A.P. Excise Act, 1968.

The officers also informed us that another tanker bearing No. 13V 8474 belonging to said Sri Kishan Singh S/o. Brij Lai Singh was seized by the Excise Officers and a case was registered vide C.R. No. 128/2002-03, dated 25-7-2002 transporting the molasses illegally.

The officers have drawn (2) two samples of molasses of 400 ml. each separately from the stock of molasses in the said tanker, sealed with the seal of Sri M. Vishnumurthy, P & ESI, SHO, Patancheru and seized the said tanker and took them under their custody for taking further action as per law. The officers have also arrested the said two accused persons after explaining the reasons for their arrest.

Contents of Panchanama read over and explained to us in vernacular language, for which we have agreed to be correct and true and we have signed the panchanama.

12. On 8-4-2003, another tanker bearing No. AP-10-T-9505 engaged by Sri Balaji Traders for transporting molasses was intercepted by Station House Officer, Andole near Kharshak Khandasari Mills, Chintakunta Village, Medak District. On enquiry, it was found that 12 MTs. of molasses were being transported from Kharshak Khandasari Mills, Chintakunta Village, Andole Mandal, Medak District to Dhoolpet, Hyderabad. The driver of the tanker, namely, N. Narsing S/o. Satyanaryana and Cleaner Mohammed Ismael S/o. Mahboob Saab disclosed that the molasses were being transported to the manufacturer of I.D. liquor at Dhoolpet, Hyderabad. Upon this, a panchanama was prepared in the presence of two witnesses, namely, Sri Manne Venkaiah S/o. Laxmaiah and Sri Chintala Bhumaiah S/o. Bogaiah, both residents of Chintakunta. Since the contents of the second panchanama are similar to the first panchanama, we are not extracting the same.

13. Immediately after registration of the cases, Sri Balaji Trader filed Writ Petition No. 5083 of 2003 for quashing the proceedings in Crime No. 177/2002-03. Sri Kishan Singh got himself impleaded as petitioner No. 2 by filing WPMP. Sri M. Ram and Sri Kishan Singh jointly filed Writ Petition No. 7335 of 2003 for quashing the proceedings of Crime No. 1/2003-04. The principal ground

on which the writ petitioners (respondents herein) questioned the registration of cases was that the concerned officers do not have the power, jurisdiction or authority to intercept the tanker and seize the goods because transportation of molasses is not prohibited by any law enacted by the Legislature. They pleaded that molasses is not an intoxicant as defined in Section 2(19) of the Act and, therefore, the same could neither be seized nor any case could be registered against them on the charge of violation of the provisions of the Act. In the affidavit filed by Sri M. Ram, Proprietor of Sri Balaji Traders, it was averred as under:

(i) that the firm is carrying on business of trading in molasses for the last ten years;

(ii) that it has been purchasing molasses from various sugar factories after payment of taxes;

(iii) that Molasses Control Order, 1961 issued by the Government of India u/s 18(c) of the Industries (Development and Regulation) Act, 1951 was repealed vide S.O. No. 371(E) dated 10-6-1993 and since then there is no legal restriction of possession, transportation etc. of molasses; and

(iv) that the Government of Andhra Pradesh had issued G.O. Ms. No. 205, dated 29-4-1984 for controlling movement of molasses, but the same was struck down by the High Court in Writ Petition No. 14399 of 1997.

14. Sri M. Ram then pleaded that the action of the respondents to seize the molasses and the vehicle is violative of Article 19(1)(g) of the Constitution of India and that Section 34(e) cannot be invoked by the non-petitioners because molasses does not fall within the definition of "intoxicant" and its sale, purchase and transportation is not prohibited by any law enacted by the competent Legislature. Sri M. Ram relied on order dated 9-8-2001 passed by the learned Single Judge in Writ Petition No. 17729 of 2001 and pleaded that the respondents cannot interfere with the firm's business of purchase and sale of molasses.

15. The non-petitioners (appellants herein) contested the writ petitions filed by M/s. Balaji Traders and others. In the counter-affidavit filed on behalf of the non-petitioners in Writ Petition No. 5083 of 2003, the following averments were made:

(i) that Registration Certificate of Sri Balaji Traders had been cancelled by Assistant Commercial Tax Officer, Mehdipatnam vide his order dated 4-8-2001 because it was found that the dealer was preparing fictitious records regarding the sale of molasses to the moulding works units. That order was set aside by Deputy Commissioner (Appeals), but the latter's order was reversed by Additional Commissioner (CT Legal) in proceedings No. CCT. Ref.-L/111(2)/689/2002-I dated 28-9-2002;

(ii) that on receipt of information regarding illegal transportation of molasses from Sadasivpet to Dhoolpet, tanker bearing No. AP-9U-465 was intercepted by

the excise officials on 10-3-2003. After serving the search memo on the occupants of the tanker, search was carried out in the presence of two panchas. Then it was found that 15 MTs. of water molasses were being transported for being handed over to the manufacturers of I.D. liquor at Dhoolpet. The driver of the vehicle failed to produce the way bill, trade licence etc. Thereupon, the tanker and i) molasses were seized. In his statement, the driver gave out that the petitioners are purchasing molasses from sugar units @ Rs. 1,000/- per MT. and selling the same to I.D. manufacturers at Dhoolpet at Rs. 7,000/- per MT. Subsequently, Crime No. 177/2002-03 was registered under Sections 13(f) and 34(e) of the Act.

16. The learned Single Judge, after noticing the pleadings of the parties, making reference to the order of the Single Bench in Writ Petition No. 14399 of 1997, the judgment of the Division Bench in Writ Appeal No. 2209 of 1998 and batch, the provisions of Sections 13(f) and 34(e) of the Act, and held that the cases could not have been registered against the writ petitioners because molasses do not fall within the definition of "intoxicant". The learned Single Judge referred to the minority and majority opinions expressed in the Full Bench judgment in *Ganesh Traders v. District Collector, Karimnagar* 2002 (2) ALD 210, repelled the suggestion made by Counsel for the petitioners (respondents herein) that the majority view requires reconsideration by observing that it is not permissible nor advisable to deal with such contention and the judicial discipline requires that the opinion rendered by a Division Bench of higher strength should be honoured, but distinguished that judgment by observing that goods recovered in that case namely, black jaggery could be used for manufacturing intoxicants, whereas the present case relates to seizure of "molasses". The relevant extracts of the order of the learned Single Judge, which contain the reasons recorded by him for quashing the cases registered against the petitioners, are reproduced below:

Though Sections 13(1)(f) and 34(e) are couched in same terms, the former is a regulatory measure and the latter is a punitive one. Section 34(e) makes it an offence if an individual "uses, keeps or has in his possession any materials, still utensil, implement or apparatus whatsoever for the purpose of manufacturing any intoxicant other than toddy". The expressions "materials" and "for the purpose of manufacturing" become significant in this context. To constitute an offence under this provision, the material used or possessed should be the one used for the purpose of manufacturing any intoxicant.

The word "materials" has to be understood in the context of the proximity of its having been used or proposed to be used for the purpose, prohibited under the said provisions, the legislature and the executive were clear in their mind in matter of bringing the commodities within the regulatory or punitive regime of the Act and the rules framed there under.

The terms "intoxicant" and "intoxicating liquor" were clearly defined under the Act. Even as regards certain materials, which are capable of being used in manufacture of "intoxicant", Rules have been framed. For example, in exercise of

its rule making power u/s 72 read with Sections 12, 13, 14, 15 and 53 of the Act, the Government framed "Andhra Pradesh Excise (Mohawa Flowers) Rules, 1973". The only basis for providing licence for possession or sale of Mohawa flowers was the possibility of its being used in manufacturing of intoxicants. Similarly, the "A.P. Denatured Spirits and Denatured Spirituous Preparations Rules, 1971" were framed providing for regulation of the manufacture, possession, transport, sale and import of the said commodity. By themselves, these commodities were neither intoxicants nor intoxicating liquors. They are the materials used in manufacture of intoxicants. When the Government had taken such measures, and did not choose to make similar provisions as regards molasses, the omission is not without significance. That commodity cannot be brought within the regulatory or punitive regimes, by way of interpretative process.

...

The fact that an individual possess a substance, which is a potential material for manufacturing an intoxicant, by itself does not make him punishable. It should be established or at least alleged, on the basis of a reasonable factual background, that he possessed it for the purpose of manufacturing an intoxicant. Necessary facts constituting the basis for such presumption should be contained in the FIR itself. Any latitude shown in this regard would give rise to disastrous consequences. For example, utensils and firewood are also used in manufacture of intoxicants. Utensils and firewood can certainly be treated as materials. On that account, every person who possesses utensils and firewood cannot be made liable to be punished on the ground that they possess such material. Similarly, the sugar factories, which store the molasses and any other trader or manufacturer in possession of the same, would become liable to be punished, because the material possessed by them is capable of being put to use in manufacture of intoxicant. It is for these reasons that in Ganesh Trader's case (supra), the State Government was directed to undertake necessary measures providing for description, character and composition of a commodity involved therein through a proper instrument, before a punitive action could undertaken thereon. Such direction was issued in respect of a commodity, which was not fit for any other use, except for manufacture of illicit liquor. The industrial use of molasses is undisputed. The fact that it is also used in manufacture of illicit liquor is rather occasional than regular. In Commissioner of Excise v. Balaji Trader's case (supra), it was already held by the Division Bench of this Court that as on today, there is no enactment to regulate the trade or use of molasses in the State of Andhra Pradesh.

Another circumstance, which needs to be noted, is that the petitioners filed W.P. No. 12279 of 2001 seeking writ of mandamus declaring the action of the respondents therein, who are the officials of the Excise Department, in interfering with the business of the petitioners in molasses, as illegal, arbitrary and prayed for a preventive relief. The writ petition was disposed of through order dated 9-8-2001, A categorical observation was made therein that molasses

is neither an intoxicant nor intoxicating liquor, as denied under the Act. The contention as raised in these writ petitions was almost accepted. The relevant portion of the order reads as under:

6. Either under the A.P. Prohibition Act or A.P. Excise Act, 1968, molasses per se is neither an intoxicant nor an intoxicant drug. In the circumstances, the contentions urged by the respondent that powers are available under A.P. Excise Act, 1968 and A.P. Prohibition Act, 1995 to regular and seize molasses merely because they might potentially be used for manufacturing of illicit liquor does not appear to be well founded.

Therefore, viewed from any angle, the crimes, registered against the petitioners cannot be sustained, if tested with the parameters laid down by the Supreme Court in several cases including the one in *State of Haryana v. Ch. Bhajan Lal* case (supra). THEY ARE ACCORDINGLY QUASHED.

17. Learned Government Pleader for Prohibition and Excise assailed the order under challenge and argued that the learned Single Judge gravely erred by quashing the cases registered against - the respondents ignoring the parameters laid down by the Supreme Court for exercise of power of this Court under Article 226 in such matters. She emphasized that the statements given by the driver of tanker bearing No. AP-9U-465 and the driver and cleaner of tanker bearing No. AP-10-T-9505 to the effect that molasses were being transported for being delivered to the manufacturers of illicit liquor at Dhoolpet coupled with the fact that the trading licence of Sri Balaji Traders to deal in molasses had been cancelled by the Competent Authority and the fact that the occupants of the vehicles could not produce way bill etc., prima facie establish contravention of Section 13(f) of the Act and, therefore, the excise authorities concerned did not commit any illegality by registering cases against the firm, its proprietor and owner of the tanker. Learned Government Pleader emphasized that observations made by the learned Single Judge that registration of FIR in such cases may result in disastrous consequences are based on pure imagination and conjectures and are far removed from the factual matrix of the case. She pointed out that the drivers of both the vehicles had made statements to the effect that the molasses were being transported for being delivered to the manufacturers of illicit liquor at Dhoolpet and in the past similar deliveries had been made and submitted these statements were sufficient for drawing an inference that the molasses were meant to be used for manufacture of "intoxicant" as defined in Section 2(19) of the Act. In support of her arguments, learned Government Pleader relied on the judgment of the Supreme Court in *Dy. Commr. of P&E, Nizamabad v. Balaji Cattle Feeds* AIR 2004 SC 4260 : AIR 2004 SCW 4925.

18. Sri A. Prabhakar Rao supported the order under challenge and argued that the learned Single Judge did not commit any error when he quashed the proceedings of the crimes registered against the respondents because purchase, sale and transportation of molasses is not prohibited by any law enacted by the competent legislature. Learned Counsel strongly relied on the judgment dated

8-5-2001 of the Division Bench in Writ Appeal No. 2209 of 1998 (The Commissioner of Prohibition and Excise, Government of A.P., Hyderabad and Anr. v. Shree Balaji Traders) and Batch, order dated 9-8-2001 passed by the Single Bench in Writ Petition No. 12279 of 2001 (Sri Balaji Traders v. The Commissioner of Excise, A.P., Hyderabad) and order dated 25-11-2002 passed in Writ Petition No. 19006 of 2002 (Balaji Cattle Feeds v. Deputy Commissioner of Prohibition and Excise, Nizamabad and Anr.) and argued that in the absence of any legal restriction on the business of molasses, the respondents cannot be subjected to harassment by way of registration of criminal cases on the pretext of violation of the provisions of Section 13(f) of the Act. He also relied on the judgment of the Supreme Court in Babu Verghese and Others Vs. Bar Council of Kerala and Others, , and argued that the proceedings registered against his clients have been rightly annulled by the learned Single Judge.

19. We have thoughtfully considered the respective contentions. The moot question which requires determination in these appeals is whether the learned Single Judge committed an error by quashing the proceedings of Crime Nos. 177/2002-03 and 1/2003-04. In this context, it is apposite to mention that while examining the challenge thrown by the respondents to the case registered against them, the learned Single Judge did not at all advert to the parameters laid down by the Supreme Court for exercise of the High Court's power under Article 226 of the Constitution for quashing the proceedings of the criminal cases, though in the concluding paragraph a reference has been made to the often cited decision of State of Haryana v. Bhajanlal case (supra).

20. The entire burden of the order of the learned Single Judge is that molasses do not fall within the definition of "intoxicant" u/s 2(19) of the Act and that mere possession of the material which could be used for manufacturing intoxicant was not sufficient to penalize the writ petitioners. The learned Single Judge then gave some hypothetical examples of the possible misuse of the provisions of the Act and held that the crimes registered against the petitioners were not sustainable. In our opinion, without recording a specific finding that the contents of the panchanama recorded by the concerned officers of the Excise Department do not disclose commission of any cognizable offence, the learned Single Judge could not have passed an order which has the effect of aborting the investigation of the cases registered against the respondents. A careful reading of the two panchanamas together with the counter-affidavit filed on behalf of the department in Writ Petition No. 5083 of 2003 sows that even after cancellation of its registration under the Andhra Pradesh General Sales Tax Act, 1957 and the Central Sales Tax Act, 1956, and trade licence, Sri Balaji Traders continued to do business of purchase and sale of molasses and the molasses purchased by the firm were being sold to the manufacturers of I.D. liquor. In their statements, the drivers of the tankers intercepted by the excise authorities categorically stated that the molasses were meant to be delivered to the I.D. liquor manufacturers at Dhoolpet. They also gave out that in the past molasses had been sold to I.D. liquor manufacturers at Dhoolpet. These statements are more than sufficient for

drawing an inference that Sri Balaji Traders had sold molasses to the manufacturers of liquor at Dhoolpet, engaged the tankers belonging to Kishan Singh for transportation of the molasses and thereby violated the provisions of Section 13(1)(f) of the Act. If the tankers had not been intercepted, the respondents would have succeeded in delivering the molasses to the manufacturers of I.D. liquor (illicit liquor) at Dhoolpet.

21. At this stage, it will also be useful to notice Sections 13(1)(f) and 34(e) of the Act, which read as under:

13. Manufacture etc., of excisable articles prohibited except under a licence ?(1)
No person shall,?

- (a). manufacture or collect an intoxicant;
- (b). cultivate hemp plant;
- (c). tap an excise tree or draw toddy from any such trees;
- (d). construct or work a distillery or brewery;
- (e). bottle liquor for sale; or
- (f). use, keep or have in his possession, any materials, stills, utensils, implements of apparatus, whatsoever for the purpose of manufacturing any intoxicant other than toddy except under the authority and subject to the terms and conditions of a licence granted by such officer, not below the rank of an Excise Superintendent, as may be prescribed:

Provided that the provisions of this sub-section insofar as they relate to establishing, continuing or licensing a distillery shall apply only to those distilleries which manufacture spirits for potable purpose and regulatory provisions relating to regulation and supervision, shall be applicable to all distilleries.

(2) A licence granted under this section shall extend and cover servants and other persons employed by he licensee and acting on his behalf.

(3) Notwithstanding anything in Sub-section (1) the Government may, by notification, direct that in such areas as may be specified therein it shall not be necessary to take out a licence for the manufacture of liquor for bona fide home consumption of the manufacturer.

34. Penalties for illegal import etc.? Whoever, in contravention of this Act or of any rule, notification or order made, issued or passed thereunder or of any licence or permit granted or issued under this Act,?

- (a) imports, exports, transports, manufactures, collects or possesses or sells any intoxicant; or
- (b) taps and excise tree; or

- (c) draws toddy from any excise tree; or
- (d) constructs or works any distillery or brewery; or
- (e) uses, keeps, or has in his possession any materials, stills, utensils, implements or apparatus whatsoever for the purpose of manufacturing any intoxicant other than toddy; or
- (f) bottles any liquor for purposes of sale; or
- (g) buys an intoxicant; or
- (h) possesses any material or film either with or without Government logo of any district in the State of Andhra Pradesh or any other State or wrapper or any other thing in which intoxicants can be packed or any apparatus, or implement or machine for the purpose of packing any intoxicant;
- (i) removes any intoxicant from any distillery, brewery or warehouse licenced, established or continued under this Act; shall on conviction be punished:

(1). in the case of an offence falling under Clause (a),?

(i) where the intoxicant involved in the offence is less than such quantity as may be notified in this behalf with imprisonment for a term which shall not be less than six months but which may extend upto three years and with fine which shall not be less than rupees five thousand but which may extend upto rupees twenty thousand;

(ii) where the intoxicant involved in the offence is not less than the quantity notified as aforesaid with imprisonment for a term which shall not be less than one year and which may extend upto five years and with fine which shall not be less than rupees ten thousand but which may extend upto rupees one lakh; and

(2). in the case of an offence other than an offence falling under Clause (a) with imprisonment which shall not be less than six months but which may extend to one year and with fine which may extend upto rupees ten thousand.

22. An analysis of the provisions reproduced above makes it clear that manufacture of an intoxicant except under the authority and subject to the terms and conditions of a licence granted by the Competent Authority is prohibited (Section 13). Clause (f) of Section 13(1) contains a prohibition against use or possession of any material etc., for the purpose of manufacturing any intoxicant other than toddy except under the authority and subject to the terms and conditions of a licence granted by the Competent Authority. A person who violates this provision is liable to be convicted and punished (Section 34). Clause (e) of Section 34 declares that whatsoever uses, keeps or has in his possession any materials, stills, utensils, implements or apparatus whatsoever for the purpose of manufacturing any intoxicant other than toddy can be proceeded against and punished.

23. It is neither the pleaded case of the respondents nor any material has been

produced before the Court to show that prior to the dates of interception of tankers containing molasses, which were meant to be delivered to I.D. liquor manufacturers at Dhoolpet, either of them possesses licence granted by the Competent Authority under Chapter IV of the Act. Therefore, it is impossible to say that the action of the concerned Excise Authorities to register cases against the respondents u/s 13(f) read with Section 34(e) of the Act is without jurisdiction or that crime report and panchanama do not disclose commission of any cognizable offence or that investigation of the offence is barred by any statute. Therefore, the contrary opinion expressed by the learned Single Judge cannot be sustained.

24. We are further of the view that the crimes registered against the respondents could not have been quashed by the learned Single Judge by relying on imaginary situations or on the premise that there is a possibility of misuse of the provisions of the Act. Such a course is legally impermissible.

25. We may now advert to the order passed by the learned Single Judge in Balaji Cattle Feeds and Anr. v. Deputy Commissioner of Prohibition and Excise, Nizamabad (supra) (Writ Petition No. 19006 of 2002 decided on 25-11-2002) on which reliance has been placed by the learned Counsel for the respondents. In that case, the petitioners challenged the seizure of molasses by the excise authorities and registration of Crime No. 132/2002-03 against them. The learned Single Judge quashed the proceedings by recording the following observations:

It is not in dispute that either under A.P. Prohibition Act or A.P. Excise Act, 1968, molasses per se is neither an intoxicant nor an intoxicant drug. It is not the case of the respondent authorities that the said molasses was seized while it was used for manufacturing of intoxicants within the State of Andhra Pradesh nor the same was seized from the place where it was used for manufacture of intoxicants, which is prohibited under the said provisions. In the absence of the same, seizing of molasses, while it was being transported from the State of Andhra Pradesh to the 1st petitioner's factory by the respondent authorities, on the ground that the same is transported to M/s. Venkateswara Distillery, Bidar, for the purpose of manufacturing rectified spirit is without any material. When the Act do not extend to Bidar, where molasses is being used for manufacture of rectified spirit, the same cannot be seized by the respondent authorities in the absence of any violation within the State, namely, use of molasses for manufacture of rectified spirit. Where A.P. Excise Act is not applicable, the authorities are obligated to conform to the law declared by this Court with regard to the lack of legislation or other power inhering in them to interfere with mere possession, transport, storage etc., of the molasses.

26. The aforementioned order does support the cause of the respondents, but the same cannot be made basis for sustaining the order under challenge because on appeal, the Supreme Court reversed the order of the learned Single Judge. Paragraphs 4 and 7 of the judgment of the Supreme Court reported as Dy. Commr. of P & E, Nizamabad v. Balaji Cattle Feeds case (supra), which have

direct bearing on these appeals read as under:

4. Similar question came up for consideration before this Court in a batch of cases, in *State of Andhra Pradesh v. Goloconda Linga Swamy and Anr.* 2004 (2) ALD (CrL.) 751 : AIR 2004 SCW 4329. In those cases FIRs filed were quashed by exercise of power u/s 482 of the Code of Criminal Procedure, 1973 (in short the "Code"). This Court set aside High Court's judgment. In the present case, like the aforesaid batch of cases, the statement of the driver of the vehicle and the Panchanama show that there was some material to proceed against the respondents. Obviously, the acceptability of the materials to fasten guilt on the accused is a matter of trial. This cannot be said to be a case where commission of offence was not disclosed.

7. Therefore, the High Court was not justified in quashing the entire proceedings. That being so, the direction for release of the tanker and the seized articles cannot be sustained. The proceedings shall revive and continue in accordance with law. Whether the materials already on record and to be collected during investigation would substantiate the accusation is a matter of trial.

27. In our opinion, in view of the aforementioned judgment of the Supreme Court, the order under challenge is liable to be set aside.

28. Before concluding, we may consider it appropriate to notice the propositions laid down in *Ganesh Traders v. District Collector, Karimnagar* case (supra). In that case, the Full Bench considered the legality of the cases registered against the petitioners under the Act on the allegation that they were found in possession of black jaggery. The majority of the Full Bench analysed the provisions of the Act, adverted to the well recognized parameters for exercise of power by the High Court under Article 226 of the Constitution and Section 482 of the Code of Criminal Procedure and laid down the following propositions:

(a) The provisions of the A.P. Excise Act including Sections 13(f) and 34(e) should be interpreted with reference to the objects of the Act and penal provisions dealing with excise offences should also receive broader interpretation having regard to the fact that the Excise Act is intended to achieve partially the objective of Article 47 of the Constitution of India;

(b) Having regard to the provisions of Sections 13, 34 and 53 and 55 of the Excise Act, we must hold that if Commissioner, Collector, Police Officer or Excise Officer "has reason to believe" that black jaggery (material) is likely to be used for manufacture of ID liquor the same can be seized and persons can be arrested and subject to facts and circumstances of each case including any report of the chemical examiner a charge-sheet can be filed u/s 34(e) of the Excise Act;

(c) In a situation such as (a) and (b) above, if the circumstances so warrant the person/accused is entitled to approach u/s 482 of Cr. P.C. and-or Article 226 of the Constitution of India and seek quashing of proceedings provided his case comes within well-settled principles for quashing FIR, charge-sheet or criminal

case. However, a writ petition in such an even at the stage of investigation is not permissible when there is prima facie material to show that black jaggery is not fit for human consumption and was intended for manufacture of ID liquor;

(d) If the FIR shows that ingredients of offence u/s 34(e) read with Section 13(f) of the Excise Act, a person cannot be heard to say in High Court that he is carrying on business or transporting black jaggery either because he is an agriculturist or businessman. All such pleas are to be raised before appropriate criminal Court.

29. Though the aforementioned case relates to "black jaggery", propositions (a) and (c) extracted hereinabove are squarely applicable to the case before us. In our considered view, the learned Single Judge was not at all justified in distinguishing the ratio of the majority judgment in the case of Ganesh Traders case (supra), only on the ground that the same related to black jaggery and the case of the respondents relate to molasses. The learned Single Judge ought to have kept in mind that the majority of the Full Bench had, after making an analysis of the relevant provisions, laid down the propositions of law, which were binding on him.

30. The argument of the learned Counsel for the respondent that in the absence of any legislative impediment, the excise authorities cannot interfere with the fundamental right of Sri Balaji Traders and its proprietor to carry on the business of purchase, sale and transportation of liquor does not require elaborate consideration because, in our considered view, that right does not entitle Sri Balaji Traders and its proprietor to abet and support manufacture of illicit liquor and violate the provisions of the Act.

31. No other point has been argued.

32. In the result, the appeals are allowed. The order of the learned Single Judge is set aside and Writ Petition Nos.5083 and 7335 of 2003 are dismissed.

33. Since the proceedings of the crimes registered against the respondents were stultified for more than three years on account of unwarranted judicial interdiction by this Court, we direct the concerned authorities of the Excise Department to complete the investigation within a period of three months from the date of receipt of a copy of this order and take necessary action in accordance with law.