

**(1996) 07 BOM CK 0030**

**In the Bombay High Court**

**Case No : Criminal Writ Petition No. 85 of 1996**

Kailashpati Kedia

APPELLANT

Vs

State of Maharashtra

RESPONDENT

**Date of Decision : 11-07-1996**

**Acts Referred:**

Constitution of India, 1950 — Article 227

Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 156(1), 200, 202, 204

Penal Code, 1860 (IPC) — Section 409

**Citation :** (1997) CriLJ 681 : (2000) 3 MhLj 650

**Hon'ble Judges :** M.B. Ghodeswar, J

**Bench :** Single Bench

**Advocate :** Rajendar Singh and Sunil Manohar, for the Appellant; V.M. Deshpande, Assistant Public Prosecutor, for the Respondent

## **Judgement**

1. The petitioner Kailashpati Kedia s/o Mahabirprasad Kedia, the Chairman of the business group known as "House of Kedia" has filed this petition under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure for quashing and setting aside the first information report registered vide Crime No. 53/96 on dated 23-2-1996 by the Inspector, Flying Squad No. I, State Excise Department, Nagpur under Sections 65(a), (e) 66(1)(b), 81, 83, 108 of the Bombay Prohibition Act, hereinafter for short "the Act" and under Rule 3(1)(b)(ii) of the Maharashtra Through Transport Rules 1952.

2. Shortly stated, the facts are as under :-

The petitioner company, Kedia Castle Dellon Industries Limited, runs a unit in Kumhari, district Durg (Madhya Pradesh) for manufacture of Indian made Foreign Liquor, for short "IMFL", the registered office of which is at 6-B, Express Towers, 42A, Shakespere Sarani, Calcutta. According to the petitioner, he is the Chairman of House of Kedia which runs various units in India at different places, one of which is at Kumhari, district Durg (MP). The 3250 boxes of IMFL were being transported by Satpal Roadways in a consignment consisting of 3 trucks

from Kumhari to Port Blair via Nagpur, Solapur, Bangalore and Madras. The accused No. 1 Accchelal Maji who is a Peon, working with the Company at Kumhari has made application on 31-1-1996 to the Superintendent of Excise at Nagpur for permission to stock the consignment at Nagpur, as the time as per passes had expired and he wanted to revalidate the passes for which permission was granted by the Excise Authorities. The excise authorities had noticed that there was contravention of Rule 22 of the Madhya Pradesh Indian Made Foreign Liquor Rules made under the Madhya Pradesh Excise Act, 1950, inasmuch as the consignment was not carrying Part II of Export Passes in Form FL 21, and therefore, the Excise Authorities has seized the consignment. According to the prosecution, the excise officers received secret information that this IMFL being transported in these consignment was to be sold at Solapur in black. In the meanwhile, the excise department officers at Nagpur contacted the excise officers at Port Blair who intimated that fake documents regarding import and export of IMFL by Kumhari company to G. Mohandas at Port Blair are created and he sent the relevant documents to the officers at Nagpur. On 23-2-1996, first information reports was registered vide Crime No. 53/96 at 22.30 hours in State Excise Office, Flying Squad, Nagpur Division, Nagpur. Accused No. 1 Accchelal was arrested on 23-2-1996. B. M. Puwaiyye, the Deputy Manager of Kumhari Company was arrested on the same day. Subsequently, Dr. Shrivastava, one of the Directors of the Company, and G. Mohandas from Port Blair were arrested and other four officers of the Company did surrender before the Chief Judicial Magistrate, Nagpur in this crime and they are released on bail. It is also alleged that the address of the petitioner was sought from Kumhari Company, but it was not made available. According to the prosecution, the telegrams were sent on the available address of the petitioner at Indore, but still petitioner did not reply, nor did make himself available for interrogation. The petitioner had applied for anticipatory bail and the Additional Sessions Judge, Nagpur has granted anticipatory bail to the petitioner on condition that he would report to the Investigating Officer on 27-6-1996.

3. The petitioner in this petition has stated that he is the Chairman of a leading business group known as the House of Kedia and the House of Kedia controls and runs six distilleries spread over various States including the State of Madhya Pradesh i.e. Kumhari, district Durg and the House of Kedia also controls various power plant projects, cement plant projects, beer plant and many more projects in the State of Madhya Pradesh, Rajasthan, Maharashtra and Madras. "Kedia Castle Dellon Industries Limited is a Public Limited Company registered under the Companies Act, 1956. Kedia Castle Dellon Industries Limited, Kumhari, district Durg is under the control of House of Kedia and the liquor is manufactured and exported as per the various licences prescribed under the Rules and provisions of Madhya Pradesh Excise Act, 1950 and this distillery is controlled and regulated under the Rules by Excise Officers posted at the distillery by the State Government of Madhya Pradesh. On receipt of copy of the import permit/part of the import permit by the Commissioner of State Excise, Gwalior, it was

despatched to the Distillery Officer and the Distillery Officer issued export pass for destination where the goods were to be despatched. The said papers of export passes, relevant permits and true copies of the invoices and batch number and Strength Certificate were carried along with the consignment. It is further stated that before the consignment reaches the entry point at the State of Karnataka, the goods have to be detailed within the State of Maharashtra, and enter Karnataka only when the passes are issued by the Karnataka for through traffic. It is averred in para 5 of the petition that one G. Mohandas who is the licensee at Port Blair, Andamans placed various orders to the company's distillery at Kumhari for despatch of various quantities of IMFL. Import Permits were bearing Nos. 7/143/LS/95-96/4299, 7/143/LS/95-96/4300, 7/143/LS/95-96/4301, 7/143/LS/95-96/4302 and 7/143/LS/95-96/4303/all dated 14-9-1995 purportedly issued by Deputy Commissioner of Port Blair. The said quantity of IMFL was allowed to unload at Nagpur in the godown of M/s. Satpal Roadlines & Company, Wadi which was done with the specific permission of the Superintendent of State Excise, Nagpur. The import permits were given back along with other papers by the State Excise Authorities, Nagpur to Acchelal accused No. 1 who was accompanying the consignment after obtaining xerox copies of the concerned papers including the import permits. As the import permit has to be revalidated from Port-Blair by the licensee, the said permits were despatched to Shri B. N. Poovaiah, Deputy General Manager of the Company at Bangalore, who sent the said permits to the licensee G. Mohandas by getting them revalidated and the said Shri Poovaiah accused No. 2 sent the said permits back to Kumhari after revalidation.

4. It is further stated that petitioner who is the Chairman of the group of industries of House of Kedia is not concerned with the day to day activities of the company located in different towns and cities of various States. The business is conducted by professionals and executives appointed to run the business and the petitioner is not concerned with the issuance of the aforesaid import/export permits in district Durg, Madhya Pradesh as is certified by the Excise Collector, Durg for the State of Madhya Pradesh on dated 23-4-1996. Further no knowledge of the alleged transaction is even attributed to the present petitioner. It is submitted that petitioner has been residing at New Delhi for more than five years and has not visited Bhilai at all within the last two years. It is further averred that the excise authorities at Nagpur have no jurisdiction under the Bombay Prohibition Act, 1949 to register the offence against the petitioner. It is further stated that though by virtue of Section 118 of the Act, offences are made cognizable, there is not even an iota of material against the petitioner to infer or suspect or allege that he has committed any offence whatsoever under the Bombay Prohibition Act and further that no offence is disclosed and the investigation cannot be permitted against him. That the petitioner Kailashpati is neither connected, named, nor involved with the alleged offences. Several reasons are given in paragraph 15 of the petition as to why the offences cannot be registered against the petitioner which are reproduced as under :

- (a) The first information report does not disclose any offence against the petitioner;
- (b) There is no allegation that the petitioner is involved in the day to day running of the concerned unit at Durg;
- (c) There is no allegation that the petitioner had knowledge about issuance of the Import Permit in favour of G. Mohandas at any point of time;
- (d) There is no allegation that the petitioner had any knowledge of the issuance of the valid export permits in favour of the company at Durg;
- (e) It is not alleged that the petitioner was present in Durg on the dates of issuance of these permits or at any other period or time to facilitate the commission of the offence;
- (f) It is also not alleged that the petitioner ever dealt with the business of the Company at Durg and had knowledge about the activities of G. Mohandas.
- (g) It is also not alleged that the Company Kedia Castle Dellon Industries Limited was in any manner wrong in applying for Export Permit to the State authorities in accordance with the Excise Act and the Rules;
- (h) The grave man of the charge is against G. Mohandas/the licensee/agent who brought Export Permit purportedly from Andamans.

The business of distillation in the State of M.P. is fully under the control of the Excise Authorities. The company Kedia Castle Dellon Industries Limited is merely running the distillery for and on behalf of the State of Madhya Pradesh under that D-1 licence (under the Distilleries Warehousing Rules). All consignment which leave the factory are processed through the hands of District Excise Authorities who are posted at the gates of the distillery. All import/export activities are routed through the District excise authorities. The intending Importer of IMFL has to reach the office of the District Excise Authorities with his permit and seek corresponding export permits from the aforesaid authorities. The entire exercise is conducted by the officers of the Excise Department. It is only after the Excise Authorities have issued the necessary permits that the company issues the consignment for dispatch/transportation. Under the M.P. Excise Act read with the rules made thereunder, the District Excise authorities maintain a vigil and strict administrative and supervisory control through its office located within the distillery. Hence there is no scope for despatch of any consignment without the authority of the officers.

- (i) As far as issuance of export permit is concerned, it has been so done validly by following the procedure prescribed for issuance of the aforesaid permits after payment of stipulated permit fee. There is no allegation or charge that there was any infirmity or discrepancy in the issuance of the export permit. There is no responsibility or methodology vested or available with the Company to verify and check the correctness of the Import Permit received through a bona fide agent

contracting authorities at the original destination, Shri G. Mohandas is a licensee duly registered with the Excise Authorities in Port Blair and hence, there was no reason to suspect his bona fides. The offence if any has been committed by G. Mohandas and none else. At least the petitioner who is totally unconnected with the place, the business of issuance of permits, with the running of industry and even knowledge of its day to day running, cannot be fastened with the criminal offence under the Excise Act. G. Mohandas had no connection, directly or indirectly, either in person or through correspondence, with the petitioner. On these admitted facts, there is no case for registering the offence against the petitioner.

(j) The petitioner is a non-resident Indian. The business commitments keep him out of country for about half a year. The petitioner is not engaged in the day to day running of the business activities of his various companies. There is no statutory liability under the Excise Act imposing a compulsory or a mandatory criminal liability upon the Chairman for acts and misconducts of others. In absence of any such statutory provision, no case of statutory criminal liability can be made out against the petitioner. The doctrine of strict liability does not apply under the Bombay Prohibition Act 1949 since there is no provision for the same.

(k) The Excise Authorities in Nagpur have also exceeded the jurisdiction in investigating and interfering with the offence which if at all, primarily should have been registered and taken note of at Durg or Andamans. No effort has been made to seek the opinion of the District Excise Authorities of Durg, M.P. in order to reach a prima facie opinion of culpability against the petitioner in respect of the offence. The entire action is without application of mind and per se illegal. It amounts to harassment to an individual unconnected with the offence."

5. The State of Maharashtra has filed reply denying all the adverse allegations and stating that the petitioner and others have committed the offence as mentioned in the F.I.R. for not only contravening the provisions of M.P. Foreign Liquor Rules framed under the M.P. Excise Act, but violated the provisions of the Act and Rules. In its detailed reply, the gist of the prosecution case is as under :

That the Port Blair Excise Authorities have not issued any import permit to Shri G. Mohandas of Port Blair to import IMFL from Kumhari Distillery of the petitioner company. The Company by making forgery has created false documents purportedly in the name of G. Mohandas showing import licence from the excise authorities of Port Blair and on that basis obtained export passes and other permits as required under the M.P. Excise Act and Foreign Liquor Rules, from the Excise Officers to the State of Madhya Pradesh. Further that the Company had illegally manufactured and bottled IMFL showing the brand names of Mohan Heaking Company. It is therefore submitted that the officers of the Excise Department of Madhya Pradesh are hand in gloves with the Company and they issued false permits, passes in order to facilitate the illegal transportation from Kumhari, District Durg. It is specifically stated that as per Rule 22 of M.P. Foreign Liquor Rules, Form F.L. 21 Part II ought to have been with the person

accompanying the consignment. But that was not found and instead Part III of F.L. 21 was found with the consignment, and therefore, it is contended that at the entry point in Maharashtra i.e. in Bhandara district, the person accompanying the consignment has not obtained pass from Collector, Bhandara or any other person authorised by the Collector as required as per R. 3(b), (i), (ii) of the Maharashtra Through Transport Rules, 1962 framed under the Bombay Prohibition Act, 1949. It is further submitted that the application of Accused No. 1 Accchelal for permission to stock and store the IMFL at Nagpur was deliberately made in order to legalise the illegal transportation of IMFL from Kumhari to Madras. It is further stated that this company at Kumhari was indulging in such transaction of illegal transportation prior to this incident from 14-9-1995 on number of times and they have avoided the tax of Rs. 21,00,000/- in this incident and prior to that about Rs. 1/- crore. The main contention is that such transactions involving huge amount of evasion of tax and illegal sale of IMFL earning a huge amount cannot be done without the knowledge and consent of the petitioner who is the Chairman of the Company.

6. The learned counsel for the applicant Shri Rajendersingh has raised the following contentions :

(i) That the Excise Officers at Nagpur have no jurisdiction to investigate, as no Court at Nagpur can take cognizance of the offence.

(ii) The petitioner is the Chairman of a large group of companies and he has nothing to do with the day to day working of the Kumhari distillery and hence he cannot be vicariously impleaded in this case.

(iii) There were all valid permits and passes given by the Commissioner of Excise, Gwalior and other excise officers and Government of Madhya Pradesh has issued licence and the consignment was being taken in a legitimate manner. Passing through the route which is already indicated does not make an offence at Nagpur.

The learned counsel has relied on the provisions of Chapters XII and XIII of the Code of Criminal Procedure Sections 157 and 177 about the ordinary place of enquiry and trial and the powers of police officers to investigate the offence. He has further submitted that the IMFL was stopped at Nagpur with the permission of the Superintendent of Excise. Further that the provisions of Ss. 65 and 66 of the Act are not applicable to the petitioner. Similarly, there is absolutely no case made out for conspiracy for attempting conspiracy under Ss. 81 and 83 of the Bombay Prohibition Act, and therefore, there is no question of evasion of any tax by the petitioner, as duty fees are paid. It is further submitted that R. 3(1)(b)(ii) of Maharashtra Through Transport Rules 1962 are complied with. Merely because longer route is shown from Kumhari to Madras via Solapur and Bangalore, it does not mean that there was any intention on the part of the Company to evade the tax. It is further submitted that in Accchelal's statement there is no mention of the name of petitioner, G. Mohandas was importing IMFL from Kumhari distillery

since 10-10-1994, and therefore, no fault can be found with the export permit. The Vice-President of the Company Ram Gopal Sharma controls the distillery and the Chairman is not looking after the day to day business of the Company. The business is being looked after by Dr. Shrivastava, who has been made accused in this case. The learned counsel for petitioner has relied on the decisions reported in State of Haryana and others Vs. Ch. Bhajan Lal and others, ; Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others, ; R. Banerjee and others Vs. H.D. Dubey and others, ; Ramon Distilleries v. State of Maharashtra 1992 Mh LJ 1387; Laxmi Khandsari and Others Vs. State of U.P. and Others, ; Daman Municipal Council and another, etc. Vs. M/s. Paramount Traders and others, ; State of West Bengal and Others Vs. Swapan Kumar Guha and Others, ; Subimal Bose of Bombay v. State of Maharashtra, (1996) 2 All MR 540; and Sham Sunder and Others Vs. State of Haryana, . On the other hand the learned counsel for the State has placed reliance on the decisions reported in Radhey Shyam Khemka and Another Vs. State of Bihar, ; P.K. Nedungadi Vs. The Malayalee Bank Ltd. (In Liquidation) and Others, ; State of U.P. Vs. Ballabh Das and Others, ; State of Maharashtra and others Vs. Ishwar Piraji Kalpatri and others, ; Kishan Chand Mangal Vs. State of Rajasthan, ; Mrs. Rupan Deol Bajaj and another Vs. Kanwar Pal Singh Gill and another, ; Ganesh Narayan Hegde Vs. S. Bangarappa and Others, ; State of Bihar Vs. Rajendra Agrawalla, ; T.J. Stephen and Others Vs. M/s. Parle Bottling Co. (P) Ltd. and Others, and State of T.N. Vs. Thirukkural Perumal, .

7. Certain provisions of Bombay Prohibition Act 1949 have to be noted in order to appreciate the rival contentions of the parties, Section 65, Chapter VII is about offences and penalties. Section 65 is about penalty for illegal import etc. of intoxicant or hemp. The Section starts with the word "whosoever". The relevant portion of S. 65 reads as under :

"65. Whoever, in contravention of the provisions of this Act, or of any rule, regulation or order made or of any licence, pass, permit or authorization granted thereunder :-

(a) imports or exports any intoxicant (other than opium) or hemp;

(b) to (d) .. .. .

(e) sells or buys any intoxicant (other than opium) or hemp, or ....."

Section 66 of the Act is for the penalty for illegal cultivation and collection of hemp and other matters. The Section reads as under :

"66. (1) Whoever in contravention of the provisions of this Act, or of any rule, regulation or order made or of any licence, permit, pass or authorization issued, thereunder -

(b) consumes, uses, possess or transports any intoxicant (other than opium) or hemp,

(c) and (d) ... ..

shall on conviction be punished;

(i) for a first offence, with imprisonment for a term which may extend to six months and with fine which may extend to one thousand rupees .....

Section 81 is for penalty for abetment. Section 81 reads as under :

"Whoever attempts to commit or abets the commission of an offence under this Act shall, on conviction, be punished for such attempt or abetment with the same punishment as is provided for the principle offence."

Section 83 is reproduced below;

"When two or more persons agree - (a) to commit or cause to be committed any offence under this Act, or

(b) to commit a breach of a condition of a licence, permit, pass or authorisation, each or such persons shall, on conviction, be punished with imprisonment for a period which may extend to two years or with fine which may extend to one thousand rupees or with both."

Further Rule 3 of Maharashtra Through Transport Rules, 1962 framed under sub-section (3) of Section 143 of the Act reads as under :

"3. Passes for through transport. - (1) The through transport of any article shall be covered - (a) .. ...

(b) in the case of any other person. -

(i) by a pass granted by the Collector or the Chief Excise Authority of the place from which such article is carried, or

(ii) by a pass granted by the Collector or any other Officer authorised in this behalf at the place in this State where the article will first enter.

(2) The pass for the through transport granted under Cl. (a) or (b) of sub-rule (i) shall be in the form appended thereto, and shall bear the seal and signature of the officer granting it :

Provided that nothing in this rule shall apply to -

(i) ... ..

(ii) any article mentioned in S. 24-A of the Act, and

(iii) any article which is transported from a place outside the State to another place outside it under cover of a licence, permit or pass granted by the Collector or the Chief Excise Authority of the place from which the article is carried, provided that the consignment is not broken in transit."

8. 11-7-1996 Sub-section (35) of S. 3 of Bombay General Clauses Act defines a



"Person" shall include any company or association or body of individuals whether incorporated or not. Sub-section (30) of Section 2 of Companies Act, 1956 defines an officer as under;

"Officer" includes any director, managing agent, secretaries and treasurers, manager or secretary, or any person in accordance with whose directions or instructions the Board of Directors or any one or more of the Directors is or are accustomed to act, and also includes -

(a) Where the managing agent, or the secretaries and treasurers is or are a firm, any partner in the firm;

(b) Where the managing agent or the secretaries and treasurers is or are a body corporate, any director or manager of the body corporate.

The principles for quashing the First Information Report and guidelines given by the Apex Court in the various authorities cited before me are as under :

In the case of Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others, placitum B reads as under (Para 10) :

"Proceedings against an accused in the initial stages can be quashed only if on the face of the complaint or the papers accompanying the same, no offence is constituted. In other words, the test is that taking the allegations and the complaint as they are, without adding or subtracting anything, if no offence is made out then the High Court will be justified in quashing the proceedings in exercise of its powers u/s 482."

In para 8 of the judgment, relying on the case of Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others, where the scope of Sections 202 and 204 of Criminal Procedure Code was considered while laying down the guidelines and the grounds on which proceedings, could be quashed, the Apex Court has observed as follows :-

"Thus it may be safely held that in the following cases an order of the Magistrate issuing process against the accused can be quashed or set aside : (1) Where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) Where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) Where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) Where the complaint suffers from fundamental legal defects, such as, want of

sanction, or absence of a complaint by legally competent authority and the like.

The cases mentioned by us are purely illustrative and provide sufficient guidelines to indicate contingencies where the High Court can quash proceedings."

In State of Haryana and others Vs. Ch. Bhajan Lal and others, , placitum (E) reads as under :

"In following categories of cases, the High Court may in exercise of powers under Art. 226 or under S. 482 of Cr.P.C. may interfere in proceedings relating to cognisable offences to prevent abuse of the process of any Court or otherwise to secure the ends of justice. However, power should be exercised sparingly and that too in the rarest of rare cases.

(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 F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under S. 156(1) of the Code except under an order of a Magistrate within the purview of S. 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 F.I.R. 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 under 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 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."

Where allegations in the complaint did constitute a cognizable offence justifying registration of a case and investigation thereon and did not fall in any of the

categories of cases enumerated above, calling, for exercise of extraordinary powers or inherent powers, quashing of FIR was not justified."

In State of Maharashtra and others Vs. Ishwar Piraji Kalpatri and others, , placitum F reads as under (Paras 22 and 24) :

"If the complaint which is made is correct and an offence had been committed which will have to be established in a Court of law, it is of no consequence that the complainant was a person who was inimical or that he was guilty of mala fides. If the ingredients which establish the commission of the offence or misconduct exist then, the prosecution cannot fail merely because there was an animus of the complainant or the prosecution against the accused. Allegations of mala fides may be relevant while judging the correctness of the allegations or while examining the evidence. But the mere fact that the complainant is guilty of mala fides, would be no ground for quashing the prosecution. In the instant case, specific averments of facts have been made whereby it was alleged that the delinquent had disproportionately large assets. Mala fide intention of the Govt. in launching prosecution against the delinquent with a view to punish him cannot be a reason for preventing the Court of competent jurisdiction from examining the evidence which may be led before it, for coming to the conclusion whether an offence had been committed or not."

"At the stage of quashing an First Information Report or complaint, the High Court would not be justified in embarking upon an enquiry as to the probability, reliability, or genuineness of the allegations made therein. The First Information Report having been lodged, the Government having accorded sanction and thereafter, the charge having been filed, there was absolutely no justification for the High Court to have stopped the normal procedure of the trial being allowed to continue. It cannot be presumed that there was no application of mind when the First Information Report was prepared and the sanction of the Government obtained ..... The truthfulness of the allegations and the establishment of the guilt can only take place when the trial proceeds without any interruption. Thus there was no justification for the High Court to have exercised its jurisdiction under Article 227 of the Constitution and Section 482, Cr.P.C. in quashing the prosecution."

In the decision of Subimal Bose of Bombay v. State of Maharashtra (1996) 2 All MR 540, head note reads as under :

"Criminal P.C. 1973, S. 482 - Interference by High Court at interlocutory stage of criminal proceeding, F.I.R. and all proceedings based thereon can be quashed when F.I.R. does not disclose cognizable offence."

The platinum is as under :

"In the present case, the company's application for exemption from the provisions of the Employees' Provident Funds Act, 1952 was pending with the Department. In anticipation, the company was deducting the contributions from

the employees and also paying its own contribution and crediting the amount in its own scheme with consent of the employees and even providing loans to them. The Company was doing this in good faith pending approval from the Department. Thereafter, the Department lodged a complaint alleging that the company had committed an offence of criminal breach of trust u/S. 406, IPC in not crediting the provident fund contribution under the provisions of the Act.

Held that the F.I.R. and all the proceedings on the basis of this F.I.R. must be quashed, since it did not disclose cognizable offence u/S. 406, IPC. By any stretch of imagination, we cannot attribute any motive in not depositing the amount with the department ....."

In *Radhey Shyam Khemka and Another Vs. State of Bihar*, head note reads as under :

"Criminal Procedure Code 1973, S. 482 - Quashing of prosecution - High Court cannot hold a parallel trial in exercise of power under - If offence prima facie fails under the Penal Code, launching of prosecution cannot be thwarted by High Court under S. 482 merely because penal action open under any other statute - Cognizance of offence taken by Magistrate under S. 409, IPC against managing director and directors (appellants) of a public limited company on the basis of charge-sheet submitted by CBI and other material prima facie disclosing dishonest misappropriation of share and debenture moneys collected from public - Application filed by appellants under S. 482 seeking their discharge on ground of availability of penal provisions for such offence under Companies Act - Held High Court justified in dismissing the application ..... Mens rea essential for offence under the Code - But to constitute offence under any social welfare legislation mere breach or contravention of its provision is sufficient."

Last para of placitum reads as under *Radhey Shyam Khemka and Another Vs. State of Bihar*, :

"The High Court should not, while exercising power u/s 482 of the Code, usurp the jurisdiction of the trial Court. The power u/s 482 of the Code has been vested in the High Court to quash a prosecution which amounts to abuse of the process of the Court. But that power cannot be exercised by the High Court to hold a parallel trial, only on the basis of the statements and documents collected during investigation or inquiry, for purpose of expressing an opinion whether the accused concerned is likely to be punished if the trial is allowed to proceed."

9. In the case of *R. Banerjee and others Vs. H.D. Dubey and others*, it is observed in para 9 as under :

"On a careful perusal of the complaints lodged by the Food Inspector under the Act it is evident that intimation regarding the nomination in favour of H. Dayani and Dr. Nirmal Sen had been communicated to the Food Inspector before the complaints came to be lodged. This is evident from the averments made in the respective complaints. The nomination was, however, not acted upon by the

complainant on the ground that it was incomplete. It was, therefore, said that in the absence of a valid nomination from the concerned company, the Directors of the company were liable to be proceeded against and punished on proof of the charge levelled against them in the complaint. It will thus be seen that there is no allegation in the complaint which would bring the case within the mischief of Section 17(4) of the Act. There is no allegation in the complaint that the offence was committed with the consent/connivance/negligence of the Directors, other than the nominated person, who were impleaded as co-accused. We are, therefore, satisfied that the allegations in the complaint do not make out a case under sub-section (4) of Section 17 of the Act. That being so, the inclusion of the co-accused other than the company and the nominated person as the persons liable to be proceeded against and punished cannot be justified. As held by this Court in *Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others*, , where the allegations set out in the complaint do not constitute any offence, no process can be issued against the co-accused other than the company and the nominated person and the High Court would be justified in exercising its inherent jurisdiction u/s 482 of the Code of Criminal Procedure, 1973 to quash the order passed by the Magistrate taking cognizance of the offence against such co-accused."

In the case of *Ramon Distilleries Ltd. v. State of Maharashtra* 1992 Mh LJ 1387, placitum (a) reads as under :

"The preamble of the Maharashtra Foreign Liquor (Import and Export) Rules, 1963 states that the said Rules have been framed in exercise of powers conferred by Section 143(2)(b) read with Sections 11, 26(d) and 53 of the Bombay Prohibition Act, 1949. These provisions enable the State Government to regulate the import, export, transport, collection, sale, purchase, bottling, consumption use or possession of any intoxicant etc. and the State Government can frame rules which would regulate the said activities. There is no provision in the Bombay Prohibition Act, 1949 which makes a person who acts as an agent for the owner of the goods liable to pay excise duty leviable u/s 105 of the Act. There is also no provision in the said Act which enables the State Government to frame a rule, making the agent jointly and severally liable with the owner of the goods. In the absence of such a provision in the substantive Act, it is not open for the State Government to frame a rule making the agent liable jointly and severally for paying excise duty along with the owner of the goods. Proviso to sub-rule (1) of Rule 23 of the Maharashtra Foreign Liquor (Import and Export) Rules, 1963 which makes the agent liable to pay excise duty along with the exporter is ultra vires the Bombay Prohibition Act, 1949 and beyond the rule making power of the *Bimal Chandra Banerjee Vs. State of Madhya Pradesh* etc., : *Ahmedabad Urban Development Authority Vs. Sharadkumar Jayantikumar Pasawalla and others*, referred."

Placitum (b) reads as under :

"Indian made foreign liquor exported from the State of Maharashtra to

destinations in Madhya Pradesh - Excise duty is payable at the place of import and not in the State of Maharashtra - The liability of the exporter to pay duty in the State of Maharashtra would only arise in case the consignment of IMFL is not delivered at the place of import or for breach of any of the Rules in Chapter. IV."

In the case of Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others, , head note (B) reads as under :

"Power u/s 482 when can be exercised for quashing criminal proceedings - Offence by Company under Prevention of Food Adulteration Act - Complaint against Company, its Directors and Manager - No clear allegations against Manager and Directors that they were responsible for conduct of business of disputed sample - Held, proceedings could be quashed against Directors but not against Manager."

In U.P. Pollution Control Board v. M/s. Modi Distillery, , placitum reads as under :

"Where an offence has been committed by a company, every person who at the time of the commission of the offence was "in-charge of and responsible to" the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Proviso to sub-sec. (1) of S. 47 however engrafts an exception in the case of any such person if he were to prove that the offence was committed without bit knowledge or that he exercised all due diligence to prevent the commission of such offence. Sub-sec. (1) of S. 47 is much wider than sub-sec. (4) of S. 17 of the Prevention of Food Adulteration Act, 1954. Furthermore, proviso to sub-sec. (1) shifts the burden on the delinquent officer or servant of the company responsible for the commission of the offence. Its burden is on him to prove that he did not know of the offence or connived in it or that he had exercised all due diligence to prevent the commission of such offence. The non-obtained clause in sub-sec. (2) expressly provides that notwithstanding anything contained in sub-sec. (1), where an offence under the Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence, and shall be liable to be proceeded against and punished accordingly.

It is true that there can be no vicarious liability of the Chairman, Vice-Chairman, Managing Director and members of the Board of Directors under sub-sec. (1) or (2) of S. 47 of the Act unless the Company owning the industrial unit, is prosecuted. However, where the industrial unit itself wilfully failed to furnish the requisite information to the Board regarding the particulars and names of the Managing Director, Directors and other persons responsible for the conduct of the Company resulting in mentioning incorrect name of the Company in complaint (Modi Distillery instead of Modi Industries Ltd. in the instant case), it was not

open to them to take advantage of the lapse of their own industrial unit (Modi Distillery) and claim that prosecution be quashed against them. The technical flaw of describing the name of the Company wrongly could be rectified by amending the complaint accordingly."

In the authority reported in T.J. Stephen and Others Vs. M/s. Parle Bottling Co. (P) Ltd. and Others, , placitum A is as follows :

"A complaint was filed against a Private Limited Company and its Managing Director for commission of offence u/s 5. Since Proviso (a) to S. 200, Criminal P.C., was applicable to such complaint, cognizance was taken without examining the complainant. The application by accused for recall of summons and dismissal of complaint was dismissed by the Magistrate. His order was affirmed by the High Court and the Supreme Court. Thereafter, an application was filed before the Magistrate that the Managing Director be discharged as the company was prepared to admit its guilt.

Held, that the application was liable to be dismissed. Since Proviso (a) to S. 200, Criminal P.C., was applicable to the complaint, the Magistrate was competent to issue process on basis of the complaint, particularly when the allegations in complaint prima facie showed commission of offence. Moreover, the application on similar ground was dismissed earlier.

Secondly, the Managing Director could not be discharged on ground that there were no allegations against him and that the offence was committed by the Company as the licensee, since the company by itself could not act."

In State of T.N. Vs. Thirukkural Perumal, , head note reads as under :

"Criminal Procedure Code, 1973 - S. 482 - High Court's power to quash FIR and criminal proceedings - Scope of - should be exercised sparingly keeping in view the guidelines laid down by the Supreme Court in various decisions - High Court not justified in evaluating the genuineness and reliability or allegations made in the FIR or complaint on the basis of evidence collected during the investigation."

10. In the decision reported in P.K. Nedungadi Vs. The Malayalee Bank Ltd. (In Liquidation) and Others, , the head note and placitum read as under :

"Companies Act (1913), S. 235 - A Director enabling another Director to perpetrate fraud resulting in loss to the Company is liable to repay and restore the loss.

Misfeasance and breach of trust include breach of duty to the Company resulting directly in misapplication or loss of Company's assets. Allegations of proof of fraud are not essential. It is immaterial that the offender is also criminally liable. Breach of such duty makes him liable to repay or restore the company's loss.

In para 6 it is held :

"In the present case the High Court has found and that finding has not been

shown to be wrong or erroneous in any manner that it was the appellant who enabled M to perpetrate the fraud which apparently resulted in loss to the Company. The appellant himself also delivered a certain benefit from the fraudulent acts of M. He would thus be clearly liable to repay or restore to the Bank the amount in respect of which there was misapplication, misfeasance and breach of trust resulting in loss to the Company. The appellant cannot escape liability for the entire amount for which an order has been made against him by the High Court."

In the decision reported in *State of Bihar Vs. Rajendra Agrawalla*, , the important point quoted is as under :

"High Court cannot quash cognizance taken of an offence u/s 482, Cr.P.C. by appreciating the evidence in coming to the conclusion that no prima facie case is made out in FIR or charge-sheet."

In the decision reported in *State of U.P. Vs. Ballabh Das and Others*, placitum (B) reads as under (para 12) :

"It is manifest that an FIR is not intended to be a very detailed document and it meant to give only the substance of the allegations made and, therefore, the absence of the mention of a lathi would not put the prosecution case out of Court."

In the decision reported in *Ganesh Narayan Hegde Vs. S. Bangarappa and Others*, , it is held that the High Court cannot enter into merits of the case and pronounce upon the truth and correctness of the complaint or defence. It can interfere only to prevent abuse of process of Court or otherwise to secure ends of justice. Interference by superior Courts at initial or interlocutory stages of criminal cases, cause delay in trial unwarranted. In placitum B, it is observed as under :

It is common knowledge that currently the criminal courts excel in slow motion. The slow motion becomes much slower motion when politically powerful or rich and influential persons figure as accused, FIRs are quashed. Charges are quashed. Interlocutory orders are interfered with. At every step, there will be revisions and applications for quashing and writ petitions. In short, no progress is ever allowed to be made. And if ever the case reaches the stage of trial after all these interruptions, the time would have taken its own toll : the witnesses are won over, evidence disappears; the prosecution loses interest - the result is an all too familiar one. Repeated admonition of the Supreme Court have not deterred superior Courts from interfering at initial or interlocutory stages of criminal cases. Such interference should be only in exceptional cases where the interests of justice demand it; it cannot be a matter of course."

11. From the above referred various decisions of Apex Court, it is clear that the High Court has inherent power u/s 482 of the Code of Criminal Procedure to quash the First Information Report. But this power has to be exercised in rarest



of rare cases where justice demands it. The main contention of the learned counsel for the petitioner is that in the First Information Report registered against him in Crime No. 53/96, there is no allegation, no material to show that he has committed any offence, much less attempt for offence. Perusal of the First Information Report shows that on 23-2-1996 at 22.30 hours. Superintendent of State Excise, Nagpur gave memorandum to Shri V. S. Telang, Inspector Flying Squad No. I, Nagpur to register crime in respect of IMFL lying at Satpal Road Lines and Company, Wadi, district Nagpur. The statements of Acchelal Maji was recorded by Shri V. S. Telang, Inspector on 22-2-1996 and by Shri Aastikar on 23-2-1996 and recorded by Shri Kirsan, Deputy Superintendent on dated 23-2-1996 were annexed with the First Information Report. Similarly, the original statements of Baliyanda Muthappa Poovaiah recorded by Deputy Superintendent on 22-2-1996 and his supplementary statement recorded by Deputy Superintendent on 23-2-1996 were also annexed. The documents along with the memorandum contained one file on which it is written as Mr. G. Mohandas CRBP File 1995-96-II having documents 1 to 130, one register on which it is written in English - Register - Andaman and Nikobar year 1994-95; one diary containing telephone numbers; Xerox copies of five import licences bearing No. 4299 to 4303 dated 14-9-95; documents mentioned in panchnama in serial Nos. 5 and 6; total Rs. 8200/- seized from accused No. 2 Poovaiah; total Rs. 3720/- seized from accused No. 1 Acchelal and total 3250 cases of IMFL costing about Rs. 65,00,000/-. Shri V. S. Telang, Inspector seized various documents, made personal enquiries with the accused and started recording the First Information Report. It mentions the application given by Acchelal to Deputy Superintendent Shri Kiran State Excise, Nagpur on behalf of Kedia Castle Dellon Industries, Kumhari, district Durg dated 31-1-1996 with five export passes accompanied by five import licences Nos. 4299 to 4303 dated 14-9-1995. It is also further mentioned that the Superintendent of State Excise, Nagpur got the liquor inspected and permitted to store the liquor as per the application of Acchelal dated 31-1-1996. Xerox copies of the original documents were taken out and signatures of accused No. 1 Acchelal and Shri Sakhare from Satpal Roadlines were obtained. It further mentions about the confidential information received by the Superintendent, State Excise, Nagpur that the said liquor was not to go to Port Blair, but will be disposed of illegally in Solapur area of Maharashtra State itself, and therefore, he contacted about this confidential information with Divisional Deputy Commissioner, Nagpur Division, Nagpur. The Deputy Commissioner sent a telegram on 3-2-1996 to the Deputy Commissioner of Port Blair, Andamans. The Divisional Deputy Commissioner, Nagpur, received a letter dated 20-2-1996 from the Deputy Commissioner, Port Blair, Andamans by Registered Post and also faxed copies of five import permit Nos. 4299 to 4303 which are revalidated upto 29-2-1996. Acchelal Maji on 22-2-1996 submitted a letter dated 21-2-1996 from Kedia Castle Dellon Industries, Kumhari informing that the liquor is sent by the factory and information was given to different points by the District Excise Officer attached to Kumhari distillery. The statements of Acchelal and Deputy General Manager Poovaiah were recorded at

Bangalore. A telephonic message was received on 22-2-1996 at midnight from Bhilai from Anand Mishra, General Manager of the Factory requesting immediate action for sending the liquor. On 23-2-1996, the statements of Acchelal and Poovaiah were recorded in front of each other, so as to point out the contradictions in their statements. M/s. Acchelal and Poovaiah in their statements have stated that at the request of G. Mohandas the liquor is sent at his cost by a longer and circuitous route from Bhilai to Nagpur, thereafter Nanded, Tuljapur-Solapur upto Bangalore in Karnataka and from there to Madras Port and Port Blair. Apprehension is mentioned that if the transaction was genuine, then the consignment should have been sent to Paradeep or through the Calcutta Port which routes are shorter and further that the transport of liquor through this route has been shown falsely. The documents filed by Acchelal show that he was to sale the liquor illegally by, avoiding excise duty in Maharashtra. There is also mention of huge amounts in the pocket diary of Acchelal. The five export passes in Form FL 21 were not found as per Rules, and therefore, there was contravention of Rule 3(i)(b)(iii) of Maharashtra through Transport Rules, 1962. The Deputy Commissioner, Port Blair, Andamans has informed that the import licence Nos. 4299 to 4203 purportedly granted by the Deputy Commissioner of Port Blair on 14-9-1995 and filed by Kedia Castle Dellon Industries Limited, Kumhari are not granted by him and hence the question of revalidating them up to 29-6-1996 does not arise at all. Hence offences have been registered them u/s 65(a), (e) 66, 108, 83 and other sections of Bombay Prohibition Act, 1949. In this offence, excise duty to the tune of Rs. 21,97,750/- has been evaded. In the five export licence dated 29-2-1996, the truck numbers were not written. The numbers of three trucks which brought the liquor stock on 31-1-96 were mentioned and the Excise Officer of Kumhari distillery has not given any explanation. Similarly, the Excise Officer of Kumhari distillery has not given any answer as to why Part No. II of Export Pass of Form No. FL 21 was not accompanying with the consignment. Further a temporary permission for storing the liquor was given in usual manner without making any detailed enquiry. This has been done cunningly and with the intention of cheating by putting forth the false reason of expiry of import licences. The offences are said to have been committed on the basis of forge documents. The offender's own black money is deposited by himself in other's false names and drafts are drawn in favour of his own name. The amount is not being paid by cheque and the black money which is obtained from these illegal transactions is converted into white money. The names of the accused which are required in this matter are given as (1) Kedia Castle Dellon Industries Limited, Kedia Nagar, Office, Calcutta, (2) G. Mohandas, (3) G. Mohandas personally and with partners, (4) Chairman, Kedia Castle Dellon Limited, (5) Vice-President of Kedia Company, Ramgopal Sharma, (6) Sunil Madhok, (7) Anand Mishra, and (8) G. M. Rao, which are noticed from the statement of Acchelal and from the correspondence. Further the names of the other accused are given as, District Excise Officer, Durg, Maik, Excise Officer, Owner of Satpal Roadlines and Company, Shri Satpal. The names of the witnesses are also mentioned.

12. The submissions of the learned Counsel for the petitioner in respect of the word "whosoever" appearing in Sections 65 and 66 and other sections of the Bombay Prohibition Act, means a person individual and none else i.e. the company is not included. The learned Counsel also pointed out that from the First Information Report where G. Mohandas is made accused in his personal capacity as well as in the capacity of partner of the firm, the petitioner's name is not mentioned as individually and only the name of Chairman of the Company is mentioned. The provisions of Bombay General Clauses Act, 1904 relate to Bombay Acts, Regulations and Ordinances. The word "whosoever" therefore means a person and the word "person" is defined in sub-section (35) of Section 2 of the Bombay General Clauses Act, 1904 that person shall include any company or association or body of individuals whether incorporated or not. It is, therefore, clear that the word "whoever" which is used in Sections 65 and 66 or in other provisions of the Bombay Prohibition Act includes a person individual and also a Company. From the perusal of the First Information Report, it prima facie appears that Rules of Madhya Pradesh Foreign Liquor Rules, framed under Madhya Pradesh Excise Act, 1915 are violated when the consignment has first taken entry in Bhandara District and as per Rule 3(1)(b)(ii) or the Maharashtra Through Transport Rules, 1962, the person accompanying the consignment has not obtained required pass from Collector of Bhandara district or the Excise Officer of Bhandara district. The learned Counsel for the petitioner has submitted that when the export permit is granted, the Maharashtra Through Transport Rules are not applicable when the transport is from outside the State to outside the State. When there is sufficient material available from the First Information Report itself that the import licences and permits shown in the name of G. Mohandas were not granted by the Excise Officer at Port Blair and these are fake documents created by the Company in my view, Maharashtra Through Transport Rules, 1962 are applicable and when offence is prima facie shown to have been committed, the Excise Officers of Maharashtra i.e. the Investigating Officers have jurisdiction to investigate the case and the Court in Maharashtra is competent to try the offence.

13. Another submission that the petitioner is a Chairman of Kedia House and he is not in overall control and day to day activities of the Company at Kumhari, as canvassed by the learned Counsel for the petitioner, is not acceptable to me, because the petitioner in his application in anticipatory bail has stated that he is the owner of the Kumhari Company and in this petition he has given his address at Indore. In this petition, he has stated that he is non-resident Indian and has given the address as N-23, Sakeet Nagar, Indore, Madhya Pradesh. It is in the correspondence of Dr. Srivastava who is one of the Directors of Kumhari Company that he was not knowing the address of petitioner. In the correspondence, one resolution of the Company is shown that this petitioner has resigned from the Managing Directorship, and from the Board of Directors of the Kumhari Company on 12-10-1995. The learned Counsel for the State has submitted that query was made from the Registrar of Companies about this

resolution. Curious enough, one letter is sent by Kumhari Company to the Commissioner of Excise, Bombay dated 25-3-1996 giving the names of the director of the company and their addresses wherein the petitioner's name is shown at Sr. No. 1, address 64, M. L. Nehru Nagar, District Durg (M.P.). The petitioner has also filed one affidavit when the hearing was at the last stage on 9-7-1995 of Shri Prakashchandra Chaware, but the learned Counsel has not pressed the said affidavit, because the learned Counsel for State has sought time of 10 days. It is also stated that the petitioner is not found at the given available address.

14. When the company is liable for contravention of the Bombay Prohibition Act and as the offences under Sections 81 and 83 of the Bombay Prohibition Act for abetment and conspiracy are registered, it appears prima facie that there is material and allegations against the petitioner for commission of the offence. The investigation is in progress and in my view, no case is made out for quashing the First Information Report. Hence the petition is dismissed.

15. At this stage, the learned Counsel for petitioner has sought time for leave to appeal to Supreme Court. Request is rejected.

16. Petition dismissed.