

(2015) 10 KAR CK 0016

In the Karnataka High Court

Case No : Writ Petition No. 109694 of 2015 (GM-RES)

Maruti

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 31-10-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 482
Karnataka Excise Act, 1965 — Section 21(1), 32, 34

Citation : (2015) 10 KAR CK 0016

Hon'ble Judges : P.D. Waingankar, J.

Bench : Single Bench

Advocate : Shivaraj P. Mudhol, Advocate, for the Appellant; Veena Hegde, HCGP, for the Respondent

Final Decision : Dismissed

Judgement

P.D. Waingankar, J.—Petitioner has filed this petition under Articles 226 and 227 of the Constitution of India read with Section 482 of Cr.P.C. to quash the proceedings initiated against him in C.C. No. 232/2015 on the file of the JMFC-III Court, Belgavi for the offence punishable under Sections 32 and 34 of the Karnataka Excise Act.

2. Petitioner is running a wine shop in plot No. 419/1, Kanabaragi Bus Stand, Gokak road, Kanabaragi in Belgaum district under the name and style "Laxmi Wine Tavern" by obtaining necessary licence and permission from the competent authority. On 04.11.2014, being a Moharum day, the District Magistrate, Belgaum by a notification No. DC. POL. CR. 380/2014-15 dated 01.11.2014 under Section 21(1) of the Karnataka Excise Act ordered for the closure of wine shops and bars in the entire district of Belgaum from 03.11.2014 to 05.11.2014 as precautionary measures for preservation of public peace in the entire district of Belgaum.

3. It is the case of the respondent/State that on 04.11.2014 while the police Sub-

Inspector Malmaruthi police station in Belagavi along with ASI V.B. Kamble and other police constables were on duty on account of Moharum festival, at about 19 hours, they received credible information that the owner of the Laxmi Wines Tavern in Kanabaragi village had opened his Wine shop and doing business despite the notification issued by the District Magistrate. The Sub-Inspector, upon forwarding the information to his higher officer, conducted a raid on the shop in the presence of two panchas. They found that the wine shop of the petitioner was opened and there were six customers inside the shop who were consuming liquor. As such, the Sub-Inspector seized the entire liquor bottles kept in the wine shop under a panchanama in the presence of panchas, apprehended the petitioner/the owner of the wine shop and filed a complaint against him before Malmaruthi police station in Crime No. 279/2014 for the offences punishable under Sections 32 and 34 of the Karnataka Excise Act. The sample liquor bottles were sent for chemical examination and after receipt of the report and after completion of the investigation, a charge-sheet came to be filed against the petitioner for the aforesaid offences in C.C. No. 232/2015 before JMFC III Court, Belgaum. To quash the proceedings in C.C. No. 232/2015, the petitioner has filed this petition on the ground that even if the entire material produced along with the charge-sheet is taken into account as it is, no offences are made out against the petitioner muchless the offences punishable under Sections 32 and 34 of the Karnataka Excise Act.

4. I have heard the learned counsel appearing for the petitioner and the learned High Court Government Pleader for the State. Perused the records.

5. It is borne out from the records that by a notification dated 01.11.2014, the District Magistrate, Belgaum had ordered for closure of all the Wine shops and Bars in the entire district of Belgaum from 4.00 p.m. on 03.11.2014 to 6.00 p.m. on 05.11.2014 on account of Moharum festival. It is borne out from the investigation papers that despite issuance of notification by the District Magistrate which was served upon the petitioner in advance, the petitioner had opened his wine shop. Upon receipt of credible information in that regard, when a raid was conducted by the Sub-Inspector of Malmaruthi police station along with panchas, they found that wine shop was opened and there were six customers who were consuming liquors in the wine shop of the petitioner. As such, the entire stock of wine bottles were seized under a panchanama in the presence of the panchas namely Imran Khalil Ahmed and Parashuram Mallappa. The police recorded the statement of the witnesses and filed a charge-sheet against the petitioner for the offences punishable under Sections 32 and 34 of the Karnataka Excise Act. Thus, the material placed on record is suffice to say that inspite of the notification, the petitioner had opened the wine shop on 04.11.2014 and doing business.

6. The notification was issued under Section 21(1) of the Karnataka Excise Act which reads as under:

"21. Closing of shops for the preservation of public peace (etc):- (1) The District

Magistrate may, by notice in writing to the licensee require that any shops in which any intoxicant is sold shall be closed at such times and for such period as he may think necessary for the preservation of public peace.

(2) xxxxxxxx"

7. Section 32 of the Karnataka Excise Act provides for penalty for illegal import etc. It reads as under:

"32. Penalty for illegal import etc.,:- (1) Whoever in contravention of this Act, or any rule, notification or order, made, issued or given thereunder, or of any licence or permit granted under this Act, imports, exports, transports, manufactures, collects or possesses any intoxicant, shall, on conviction, [be punished for each of offence with rigorous imprisonment for a term which may extend to five years and with fine which may extend to fifty thousand rupees]]."

8. Since the petitioner was engaged in sale of intoxicant in his wine shop despite notification issued by the District Magistrate for closure of the shop, it appears to me that prima-facie case has been made out against the petitioner for having committed the offence under the provisions of the Karnataka Excise Act, 1965 and accordingly after investigation charge-sheet also came to be filed against the petitioner. Under such circumstances, quashing of the proceedings initiated against the petitioner would tantamounts to miscarriage of justice. Needless to say that the power under Section 482 of Cr.P.C. is extraordinary power. It has to be exercised sparingly with circumspection where allegations in the complaint/ FIR taken on its face value and accepted in their entirety do not constitute the offences alleged. Having regard to the facts and circumstances of the case and the reasons stated as above, this is not a case to quash the proceedings as desired by the petitioner that too when a charge sheet is filed.

Hence, the writ petition is dismissed.