(2017) 12 DEL CK 0413

In the Delhi High Court

Case No : Criminal Miscellaneous Case No. 1737 Of 2015, Criminal Miscellaneous Application No. 6262 Of 2015

P N Dewan & Anr — APPELLANT

Vs

State (Nct Of Delhi) — RESPONDENT

Date of Decision : 18-12-2017

Acts Referred:

Delhi Liquor Licence Rules, 1976 — Rule 30, 33(17A), 33(17B)
Code Of Criminal Procedure, 1973 — Section 482
Indian Penal Code, 1860 — Section 199, 200, 420, 468, 471

Citation : (2017) 12 DEL CK 0413

Hon'ble Judges : I. S. Mehta, J

Bench : Single Bench

Advocate : Ashok Bhan, Shailender Kumar, Rajesh Sharma, Panna Lal Sharma

Final Decision : Allowed

Judgement

,,,,

I. S. Mehta, J",,,,

1. By way of the above captioned petition filed under Section 482 of the Code of Criminal Procedure, 1973, the petitioners seek to set aside the",,,,

impugned order dated 24th January, 2015 passed by the learned Additional Sessions Judge, Tis Hazari Courts, New Delhi whereby the revision",,,,

petition against the orders dated 2nd April, 2008 and charge dated 19th April, 2008 were dismissed and to quash all the proceedings emanating from",,,,

FIR No. 493 of 1995 under Sections 420/199/200 IPC registered at I.P. Estate, Delhi.",,,,

2. The brief facts stated are that, the District Excise Officer, Delhi, made a complaint to SHO of Police Station I.P. Estate on t5h December, 1995",,,,

alleging that M/s. Devans Modern Breweries Ltd. Bohri, Talab Tillu, Jammu, Attorney of the firm, Chartered Accountant had applied for grant of L-1",,,,

License in the National Capital Territory of Delhi in respect of three brands of beer namely Godfather, Rocky Lager, Gold Ribon Lager and two",,,,

brands of Indian Made Foreign Liquor (hereinafter referred to as IMFL) namely Double Horse Malted Whiskey and Kashmir XXX Rum through its,,,,

attorney. Along with their application for L-1 License, the Managing Director- Mr. P.N. Dewan had furnished a declaration of",,,,

Distillery/Brewery/Winery and affidavit to the office of Excise Commissioner, Delhi, thereby declaring the sale figures of the following IMFL brands",,,,

for the year 1992-93 and 1993-94 as under:,,,,

Â Brand Name 1992-93 1993-94,,,,

1. Double Horse Malted Whiskey 44515 63028,,,,

2. Kashmir XXX Rum 22500 41319,,,,

3. In the complaint it was further stated that for grant/renewal of L-1 License in Delhi, it was mandatory that the brewery has sale of more than",,,,

60,000 cases of whiskey and 25,000 cases of rum for the preceding two years throughout India excluding Delhi. On the basis of affidavits/documents",,,,

dated 26th May, 1994, 31st May, 1994 and 24th June, 1994 filed by accused persons, L-1 License was granted by the Commissioner of Excise.",,,,

4. Thereafter, an inspecting team of Excise Officers went to the distillery on 1st September, 1994 to verify the declared sale figures of the aforesaid",,,,

brands. The team found that the sale figure for Double Horse Malted Whiskey for the year 1993-94 was 33851.5 cases only and a false figure was,,,,

furnished to obtain L-1 License in respect of same brand. When the Excise Department received the report that the petitioners had given wrong sales,,,,

figure to obtain the L-1 License, the license was subsequently cancelled.",,,,

5. Consequently, a complaint was filed by the District Excise Officer, Delhi on 5th December, 1995 before the police against the accused persons,",,,,

alleging that they obtained the L-1 License unlawfully. On the basis of this complaint present FIR No. 493 of 1995 was lodged on 6th December, 1995",,,,

and after investigation the police filed charge sheet under Sections 420/468/471 IPC.,,,,

6. The learned Metropolitan Magistrate vide order dated 20th October, 2007 directed charges to be framed against the petitioners under Sections",,,,

420/199/200 IPC and the formal charge was framed vide order dated 19th November, 2007. The learned Metropolitan Magistrate discharged the",,,,

Chartered Accountant- Mr. A.K.Anand vide the same order.,,,,

7. Subsequently, the petitioners filed a criminal revision petition No. 731 of 2007 in this Court against the orders dated 20th October, 2007 and 19th",,,,

November, 2007. This Court vide order dated 7th January, 2008 remanded back the case for fresh consideration on the question of framing of charge",,,,

restricted to two pleas i.e. the charge against the petitioners show that the petitioner had applied for the grant of L-1 License while the actual fact was,,,,

that the petitioners already held a L-1 License and wanted to add two brands of liquor, in respect of which the false information was given and the",,,,

second plea was that the learned Metropolitan Magistrate while framing the charge did not consider the plea of petitioners that there was no loss,,,,

suffered by the Excise Department nor any gain by the petitioners/accused persons.,,,,

8. The learned Metropolitan Magistrate, in compliance to the order of this Court examined the matter afresh and came to the conclusion that the",,,,

factual situation presented before the Trial Court was not the same as projected before the Honâ??ble High Court that the petitioners/accused,,,,

persons already held a L-1 License for the year 1994-95. The case before the learned Trial Court as presented by both the State and the complainant,,,,

department was that the petitioners/accused persons had applied for the grant of L-1 License in respect of certain brands of beers and Indian Made,,,,

Foreign Liquor and petitioner no.1 had furnished his affidavit/declaration giving sale figure of each of the brands for the year 1992-93 and 1993-94. It,,,,

was on the basis of this declaration, that the Excise Department granted the L-1 License and then sent the inspecting team to verify the sale figures.",,,,

When the Excise Department received the report that the sale figure for brand Double Horse Malted Whiskey for the year 1993-94 was incorrect, it",,,,

cancelled the L-1 License subsequently. The learned Metropolitan Magistrate vide order dated 2nd April, 2008 ordered for framing of charges against",,,,

the petitioners for the offences punishable under Sections 420/199/200 IPC and vide order dated 19th April, 2008 charges were framed against the",,,,

petitioners.,,,,

9. Aggrieved from the aforesaid order dated 2nd April, 2008 the petitioners filed

a criminal revision petition No. 227 of 2008 before this Court which",,,,

was disposed off vide order dated 27th August, 2014 observing that next hierarchical court after the Magistrate is Session Judge and sent this case to",,,,

the concerned District & Sessions Judge (Central District), Tis Hazari Court with the direction to assign the same to the concerned Additional",,,,

Sessions Judge.,,,,

10. The case was marked to the court of learned Additional Sessions Judge as criminal revision petition no. 152 of 2014 and vide order dated 24th,,,,

January, 2015, the said petition was dismissed with the observation that there was no infirmity in the order of learned Metropolitan Magistrate",,,,

whereby charges were ordered to be framed against the petitioners.,,,,

Hence the present petition.,,,,

11. The learned senior counsel appearing on behalf of the petitioners has submitted that the FIR in the present matter was filed on the basis of a,,,,

complaint filed by the Excise Officer stating therein that while the petitioner had applied for L-1 License for sale of liquor in NCR-Delhi, he was",,,,

already holding L-1 License. He further submitted that there was a further requirement for endorsement on L-1 License to sell a particular product or,,,,

brand of liquor in Delhi on deposition of separate fee for each such brand and required a certificate under the Excise Rules.,,,,

12. He has further submitted that the allegations in the FIR No. 493 of 1995, that the petitioners had submitted along with L-1 application, the details of",,,,

previous sale excluding Delhi and the same was furnished on the basis of certificate issued by Local Excise Officer provided in his brewery at,,,,

Jammu. He further submitted that there is requirement for appointment of an Excise Officer at brewery to regulate sales, manufacturing and storage",,,,

(a)Name of the brand,"Sale of figure (actual) for all over

India excluding Delhi during the

last two years.",,,

,1992-93,1993-94,,

Godfather Super Strong Beer,525648,651868,,

Rocky Lager Beer,29007,45486,,

Gold Ribon Lager Beer,49030,49437,,

Double Horse Malted Whiskey,44515,63028,,

Kashmir XXX Rum,22500,41319,,

S.No.,Name of the brand,"Rate per case of

Quartz (Doz)","Rate per case of

pints","Rate per case of

Nips.

1,2,3,4,5

,"Godfather Super

Strong Beer",137/-,x,x

,Rocky Lager Beer,120/-,x,x

,"Gold Ribon Lager

Beer",150/-,190/-,

,"D o u b l e Horse

Malted Whiskey }",285/-,300/-,315/-

,Kashmir XXX Rum,285/-,300/-,315/-

sizes i.e. quarts. Nips and pints sent out for rum, whiskey, etc. However, it does not mention brand wise for rum, Whiskey, etc. sent out",,,,

including all brands of whiskey, rum, etc., produced by the brewery.",,,,

The month wise total rum and whiskey (including all brands) is given in Annexure â??Aâ?. The total number of cases sent out by the,,,,

distillery is given for both rum and whiskey.,,,,

Whiskey (all brands) 35,655",,,,

Rum (all brands) 46,085",,,,

These above figures (in cases) are for sales all over India for all brands of Whiskey and rum manufactured by the brewery , However, since",,,,

the brewery did not sell any of its whiskey and rum in year 1993-94. The above figures are for sale of all brands of whiskey (excluding,,,,

Delhi) and sale of all brands of rum (excluding Delhi),,,,

The total of all the Transport permits from number 1 to number 803 was done for Kashmir xxx Rum and Double Horse Malted Whiskey. The,,,,

total in dozen bottles was converted into cases as the Transport permit gave the number of dozens of bottles dispatched for various sizes i.e.,,,, Quarts, Pints and Nips.",,,,

From the total of transport permit for year 1993-94 the dispatch (in cases) is given below:,,,,

Kashmir xxx Rum 42,481.25",,,,

Double Horse Malted Whiskey 33, 851.50",,,,

From the above figure and even from the monthly statement it is clear that the figure as given in the certificate from the Excise Officer, of",,,,

the brewery (at 51/c) and the affidavit of the Managing Director of the brewery (at 54/c) are false for Double Horse Malted Whiskey. In,,,,

light for the above reason the declaration as given by the Managing Director in the different at 54/c is false and hence company be,,,,

blacklisted as at 53/c at â??xâ?? as under the rules and provisions of law.,,,,

(sd) Â (sd),,,,

6/9/94 Â 6/9/94,,,,

(Debashree Mujherjee) Â (Amit Yadav),,,,

SDM (Kotwali) Â SDM (SHAH.)â??,,,,

25. The whole question here, hinges around whether wrong information of sale of one brand amounts to attraction of offences punishable under",,,,

Sections 420/199/200 IPC in the present petition?,,,,

The answer is NO.,,,,

26. In the instant petition, the petitioner no.1 had applied for L-1 License at Delhi for five items i.e. Godfather Super Strong Beer, Rocky Lager Beer,",,,,

Gold Ribon Lager Beer, Double Horse Malted Whiskey and Kashmir XXX Rum. On inspection, it was found that sale figures for four items were",,,,

correct and sale figure for only one item i.e. Double Horse Malted Whiskey was slightly different, instead of writing a sale figure of 33,851.50, the",,,,

sale figure for the said brand was shown to be 63028.,,,,

27. Admittedly, the petitioner is in the business of selling liquor for the preceding three years and there is no complaint qua petitioners on this account.",,,,

The L-1 license granted to the petitioners for the year 1989-90, 1990-91 and

1991-92 is reproduced hereunder for ready reference:",,,,

â??L-1 Licence 1989-90,,,,

OFFICE OF THE COMMISSIONER OF EXCISE:DELHI.,,,,

2: BATTERY LANE: RAJPUR ROAD DELHI.,,,,

No. F. L-1/39-90/2,,,,

Dated the 30.03.1990,,,,

(I)/ Excise/ IMFL/5067,,,,

To,,,,

M/s Dewan Modern Breweries,,,,

A-29/2 NIA, Phase I, New Delhi",,,,

Sub: EXTENSION OF L-1 LICENSE FOR THE YEAR 1989-90(89-90).,,,,

This is to inform you that Honâ??ble Lt. Governor, Delhi in exercise of powers conferred upon him under the provisions of the Rule 30 of",,,,

the Delhi Liquor Licence Rules, 1976, has been pleased to extend the licencing period of L-1 licences (Licencees for the wholesale supply of",,,,

IMFL/ Beer) which is expiring on 31.03.1990 for a period of 15 days, i.e. from 1.4.1990 to 15.4.1990 at the existing rates of licence fee on",,,,

prorate basis.,,,,

In case you are interested in extension for licencing period of your L-1 licence for all the brands held by you for a further period on 15,,,,

days i.e. 1.4.1990 to 15.4.1990. You are requested to deposit a sum of Rs.2200/- with this office immediately latest by 31.3.1990 pm receipt,,,,

of this letter, being licence fee for 15 days in respect of all the brands held by you.",,,,

Yours faithfully,",,,,

V.K. Jha,,,,

COLLECTOR OF EXCISE:DELHI.,,,,

No. F.L-1/89-90/2(1)/IMFL,,,,

Dated the 30.3.1990,,,,

Copy to bond inspector concerned.,,,,

*****,,,,

L-1 (1990-91),,,,

No.F.L-1/ (10/90-91/IMFL/Excise,,,,

Dated April,,,,

ORDER,,,,

The wholesale and retail prices of the following brands details of which are given overleaf, have been fixed by the competent authority in",,,,

accordance with the provisions of Sub-rule (17A) of 33 of the Delhi Liquor Licence Rules, 1976 and the Excise Policy",,,,

1. Name of the Licensee-1990-91 Â Â Â Â Â Â M/S. Dewan Modern Brew. (1.5.90 to 31.3.91),,,,

2. Name (s) of the distillery/distilleries. M/S.Dewan Modern Brew. Ltd. Jammu,,,,

3. Brands.,,,,

1. Rocky Beer,,,,

This order shall come into force w.e.f. 1st May 1990 for all the brands licenced to the L-1 (Wholesale) Licensees.,,,,

(Alka Diwan),,,,

DISTT. EXCISE OFFICER,,,,

DELHI,,,,

No.F.L-1/ (1)9/90-91/IMFL/ EXCISE/445 to 452,,,,

Dated :-1.5.90,,,,

Copy to:-,,,,

1. The Secretary (Finance), Delhi Admn. Delhi",,,,

2. Managing Directors, DSIDC, DTTDC, DSUSC and Administrator ____ for necessary action. They are requested to ensure that the",,,,

brands mentioned overleaf are sold at revised rates.,,,,

3. All Branch Officers of the Excise Department.,,,,

4. Concerned L-1 (Wholesale) Licensee.,,,,

5. All Sub-Inspector/Inspectors posted at licenced premises of L-1 licensee.,,,,

6. P.A. to E.C/D.C.,,,,

7. Inspector Local Transport Permit.,,,,

8. Bond. Inspector of M/S Dewan Modern Brew. Ltd. Jammu to prepare inventory of different brands of IMFL at the time of closing hours,,,,

of 30.4.90 and submit the same on 1.5.90 in this office positively.,,,, (Alka Diwan),,,,

DISTT. EXCISE OFFICER,,,,

DELHI,,,,

*****,,,,

L-1 Licence 1991-92,,,,

OFFICE OF THE COMMISSIONER OF EXCISE,,,,

2: BATTERY LANE: RAJPUR ROAD DELHI.,,,,

No.F./1-1/ 36(1)/91-92/IMFL/EX/273,,,,

Dated:18/6/91,,,,

ORDER,,,,

The wholesale and retail sale prices of the following brands of which are given overleaf, have been fixed by the competent authority in",,,,

accordance with the provisions of sub rule (17-A and 17-B) of rule 33 of the Delhi Liquor Licence Rules, 1976, and the Excise Policy",,,,

approved for the year 1991-92.,,,,

1. Name of the Licence-1991-92 M/S Dewan Modern Breweries Ltd.,,,,

2. Name(s) of the distillery/distilleries 1. M/S Dewan Modern Breweries Ltd. Talab Tillu, Jammu.",,,,

3. Brands:,,,,

1. GODFATHER SUPER STRONG BEER (below 8.25% V.V.),,,,

2. Rocky Lager Beer (below 5% V.V.),,,,

This order shall come into force with immediate effect for the brands licenced to the L-1 (wholesale) licensees.,,,,

(C.K. Dolley),,,,

Distt. Excise Officer (IMFL),,,,

No.F.L-1 36 (i)/91-92/IMFL/Ex/273 dated: 18/06/91,,,,

Copy to:,,,,

1. The Secretary (Finance), Delhi Admn. Delhi",,,,

2. Managing Directors, DSIDC, DTTDC, DSUSC and Administrator ____ for necessary action.",,,,

They are requested to ensure that the brands mentioned overleaf are sold at revised rates.,,,,

3. Concerned L-1 (Wholesale) Licensee.,,,,

4. All Sub-Inspector/Inspectors posted at licenced premises of L-1 licensee.,,,,

5. P.A. to E.C/D.C.,,,,

6. Inspector Local Transport Permit.,,,,

(C.K. Dolley),,,,

DISTT. EXCISE OFFICER (IMFL),,,,

DELHI.â??,,,,

28. The petitioner no.1 had applied for the grant of L1-License in form L-1 for the year 1994-95 in the Excise Department, Delhi. Along with the said",,,,

application the petitioner no.1 had submitted an affidavit cum declaration of distillery/brewery/winery with respect to the sale of brands sold all over,,,,

India excluding Delhi for the last two years. Out of the five brands only one brand had slight difference of sale figure. It might be possible that the,,,,

wrong figure was given due to typographical error or due to inadvertent error on the part of the petitioner.,,,,

29. It is crystal clear coming on record that by showing sale figure of 63028, the petitioner is not going to gain anything or the petitioner made any sale",,,,

of Double Horse Malted Whiskey on the basis of this sale figure in the licensing period.,,,,

30. Moreover, it was the government who would be gaining revenue on the basis of license issued in favour of the petitioner. Since, there was no",,,,

motive/gain emerging from the present facts and circumstances to invoke the provisions of Sections 420/199/200 IPC. The element of mens rea is sine,,,,

qua non for the attraction of the abovementioned provisions. Here the observation of Apex Court in Jotish Chandra Chaudhary v. State of Bihar, AIR",,,,

1969 SC 7, is relevant:",,,,

â??A person can be charged under Section 200 if the declaration was used corruptly - Facts revealed that appellant would not have,,,,

gained any advantage by giving wrong date of birth - Held, Single Judge not justified in directing lodging of complaint under Sections 199",,,,

and 200.â??,,,,

31. This Court in the case of Devinder Raj Narang v. State, 2007 [2] JCC 1420 has also held that:",,,,

â??Furnishing of a declaration and supporting documents, that 33,000 cases were sold in a given year, by itself does not amount to false",,,,

declaration â?" For the same reasons as in the case of the charge under Section 420 the charge under Section 199 cannot be sustained.â??,,,,

32. Also, in the case of Smt. Kusum Sandhu and Another v. Sh. Ved Prakash Narang, 2009 CriLJ 1078, this Court has held that:",,,,

â??When there is no fraudulent or dishonest intention is shown right at the beginning of the transaction - A prima facie case of cheating,,,,

cannot be made out â?" Complaint did not disclose any ingredients of cheating â?" Hence, impugned order and complaint quashed.â??",,,,

33. It is apparent on the face of the record, that the element of dishonest intention on part of the petitioners is missing. The petitioner no.1 is not",,,,

gaining anything out of the incorrect information as stated and act of the petitioners so giving wrong information does not put any economic loss to the,,,,

Excise Department. Therefore, the offences punishable under Section 420 read with Sections 199/200 IPC are not made out.",,,,

34. In view of the aforesaid reasons and circumstances in the present case and in the light of the abovementioned caselaws, the FIR No.493/1995",,,,

under Sections 420/199/200 IPC registered at Police Station I.P. Estate, Delhi and the consequential impugned order dated 24th January, 2015 passed",,,,

by the Additional Sessions Judge, Tis Hazari Courts, Delhi are hereby quashed and set aside respectively.",,,,

35. Consequently, the present petition is allowed and disposed of in the above terms. All the pending applications (if any) are also disposed of.",,,,

36. Lower Court Records be sent back forthwith along with one copy of this judgment to the concerned Court(s).,,,,

No order as to Costs.,,,,

