
(2012) 03 BOM CK 0127

In the Bombay High Court

Case No : Criminal Writ Petition No. 35 of 2011

Shri. Rajesh Narayan Jaiswal

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 01-03-2012

Acts Referred:

Bombay Prohibition Act, 1949 — Section 119, 120, 121, 122, 123

Constitution of India, 1950 — Article 226

Criminal Procedure Code, 1973 (CrPC) — Section 117, 118, 149, 150, 151

Citation : (2012) BomCR(Cri) 15 : (2012) 114 BOMLR 1215

Hon'ble Judges : T.V. Nalawade, J; Naresh H. Patil, J

Bench : Division Bench

Advocate : V.D. Hon, for the Appellant; S.D. Kaldate, Assistant Public Prosecutor for State, for the Respondent

Judgement

T.V. Nalawade, J.—The petition is filed under Article 226 of Constitution of India for relief of quashing the F.I.R. of Cr. No. 5/2009 registered in Mohadi Nagar Police Station, Dhule. Preventive relief to prevent the respondents, police officers, from visiting the shop premises of the petitioner is also claimed. One more relief of compensation in respect of so called illegal action taken by the police officers in respect of Cr. No. 5/2009 is also claimed. Both the sides are heard.

2. The petitioner is holding CL-III licence issued under the Bombay Prohibition Act, 1949 (hereinafter referred to as "the Act" for short) and he is running a Country Liquor Shop (retail shop) at Dhule, District Dhule. It is the case of the petitioner that he had placed an order for supply of five boxes of country liquor bottles with M/s. Maharashtra Liquors, wholeseller, holding CL-II licence. It is contended that after taking the delivery, boxes were loaded in one auto-rickshaw for transporting up to the shop of petitioner and on 21.1.2009 the boxes were being transported to the shop of petitioner under valid transport pass issued under the Act. It is contended that the police illegally intercepted the vehicle and the vehicle was detained alongwith the goods. It is contended that though the

auto-rickshaw number mentioned for transport in the pass was different than the auto-rickshaw which was actually used for transportation purpose, police ought not to have taken action like registration of offence against the auto-rickshaw driver and the petitioner. It is contended that at the most, the police ought to have referred the matter to Excise Department as it may amount to breach of conditions of licence, transport pass etc. It is contended that the driver and the petitioner were illegally arrested after registration of the crime.

3. It is the case of the petitioner that in view of various circulars issued by Inspector General of Police and directions issued by the State Government (Home Department), from time to time, police cannot take such action and action, if any, can be taken only by Excise Department. It is contended that the charge-sheet is also filed by police against the petitioner for offence punishable u/s 65 (a) and (e) of the Act and that action is illegal.

4. The Superintendent of Police, District Dhule, has filed affidavit in reply. He has contended that police officers have ample power to register the crime and investigate such matter. It is contended that under the Act, police have power of arrest and seizure of such material. It is contended that when the auto-rickshaw was intercepted, it was found that the rickshaw driver was not holding the transport pass in respect of rickshaw No. MH-18/M-3984, in which liquor bottles were being transported. It is contended that in view of this circumstance and in view of the powers conferred on police, the crime for offence punishable u/s 65 (a) and (e) of the Act was registered. One P.S.I. and one P.I. have filed similar affidavits.

5. It appears that Deputy Commissioner of State Excise Department has also filed an affidavit. She has contended that in view of various circulars issued by the State Government, police are not expected to take such action and if at all, any contravention is noticed, police must refer the matter to Excise Department. It is contended that only the Excise Department is entrusted with the work of implementation of provisions of the Act.

6. Copies of papers of investigation, which include F.I.R., seizure panchanama and statements of police staff, who took part in the action, are produced. This record shows that on the basis of information received by police that liquor bottles were being illegally transported in rickshaw No. MH-18/M-3984, the action was taken on 21.1.2009. After interception of the auto-rickshaw, when police asked the rickshaw driver to produce transport pass, he could not show transport pass in respect of this auto-rickshaw. Zerox copy of the transport pass was shown, but it was in respect of auto-rickshaw No. MH-18/M-7784. In view of these circumstances, both the vehicle and liquor bottles were seized and the police officer gave F.I.R. It is not disputed now that chargesheet is also filed. The police papers show that statement of an employee of Maharashtra Liquor's, wholeseller, from where the boxes were collected is recorded by the police and it is to the effect that the transport pass was given in respect of auto-rickshaw No. MH-18/M-7784.

7. To ascertain, as to whether police can take such an action, this Court has gone through the provisions of the Act and the Rules framed under the Act. The provisions are grouped in separate chapters as per the purpose behind the provisions. In Chapter I, the definitions are given. In section 2(22) "intoxicant" is defined as "any liquor, intoxicating drug, opium or any other substance, which the State Government may, by notification in the Official Gazettee, declare to be an intoxicant". Chapter No. II contains provisions for creation of establishment, system for carrying out generally the provisions of the Act. The post of Commissioner is created to superintend the administration. Section 6 of this Chapter shows that the officers of other departments including police department can be also invested with the powers to perform the functions under this Act and the powers can be conferred in the right of his office or personally. In ordinary course, separate staff of Excise Department is expected to work as the establishment created for this Act.

8. In Chapter III, there are provisions to prohibit manufacture, sell, consumption, etc. of intoxicant and other substances containing alcohol. In view of the provisions, the prohibited substances cannot be manufactured, sold, possessed or consumed, otherwise than the provisions made in the Act and the Rules. In Chapter IV, there are provisions to grant exemption from prohibition to some substances and there are also provisions to regulate and control the use of such exempted substances. In this Chapter, there are provisions for issuing licences, permits etc. to control and regulate the manufacture, use, consumption etc. of such substances. There are also provisions which authorize the officers of Excise Department to issue the licences, permits etc. The provisions of Chapter IV-A are made to regulate the manufacture etc. of articles, which are exempted under Chapter IV, particularly, mentioned in section 24-A. Chapter IVB, V, VI contain provisions for control and regulation of use of some other substances like mhowra flowers, spirit preparation and molasses. These substances can also be used for manufacture of intoxicant or alcohol. The provisions of Chapter II, III, IV, IV-A, IV-B, V and VI do not refer to the powers of police officers. They are referred, particularly, to the officers of Excise Department. Unless powers are specifically conferred on police officers u/s 6 of the Act, police officers cannot become members of this establishment for the purpose of these provisions.

9. Chapter VIII is in respect of excise duty and the powers of the officers of Excise Department in connection with levying excise duties. They also do not refer to the police officers.

10. Chapter VII contains provisions which provide for penalty, when there is a breach of the provisions made in Chapter II to VI-A. In Chapter IX, there are provisions to prescribe procedure which is to be followed when the breach of such provisions is detected or suspected. Section 117 of Chapter IX provides that the provisions of Criminal Procedure Code, 1973 ("Cr. P.C." for short) with regard to investigation, search, detention in custody, arrest are to be followed. Section 118 provides that unless there is any provision in the Act, which is contrary, the

provisions given in Cr. P.C. for cognizable offence are to apply to offences under the Act. Section 119 provides that offences which are made punishable u/s 65, 67, 67-A, 68, 70, 72 and 83 are non bailable offences. The provisions of Chapter VII and IX of the Act read with provisions of Cr. P.C. show that police officers are expected to act when such cognizable offences are detected. Sections 41, 149 to 151, 154 and 156 of Cr. P.C. provide that whenever a cognizable offence is committed within the local jurisdiction, the police officer may use the powers given to him under these sections of Cr. P.C. Thus, even if, provisions of section 120 and of subsequent sections of the Act are ignored, it can be said that the police officers can act in view of the aforesaid provisions of the Act and Cr. P.C., when offence is committed under the Act.

11. The provisions of sections 120, 121, 122, 123, 125 and 128 of the Act show that in all these sections, there is mention of police officer alongwith the officers of Excise Department. These sections specifically give power to the officers mentioned in the sections to enter and inspect the premises, when there is reason to believe that intoxicant, any prohibited substance is kept there in contravention with the provisions of the Act. The provisions show that the police officer can stop and search the vehicle and he can also seize intoxicant, which is liable to be confiscated under the Act. The provisions of section 122 of the Act show that the police officer can require to produce licence and he can seize intoxicant etc. when offence is committed in respect of intoxicant under the Act. Under these provisions, police officer can arrest a person when there is reason to believe that the person has committed an offence under the Act and as per section 123 of the Act, such arrest can be made without warrant. Section 125 of the Act shows that intoxicant in transit can be seized by the police officer, if it is liable to be confiscated under the Act. These provisions do not show that police officers can exercise such powers only when there is special authorization to them under the Act. Thus, under the provisions of the Act and under the provisions of Cr. P.C. already mentioned, police officers have power to detect and investigate the offences committed under the Act.

12. On the other hand, section 129 of the Act shows that unless Prohibition Officer is empowered by the State Government to investigate the offence committed under the Act, the Prohibition Officer does not get power similar to the power of Police Officer incharge of police station. If the officer is empowered u/s 129, then he can use the provisions of sections 131 and 132 of the Act. The provisions of section 123(2) and 130 of the Act show that when Prohibition Officer makes arrest or seizure of intoxicant or the prohibited articles under provisions of the Act, he is expected to forward both the person and the articles seized by him to the officer incharge of nearest police station. Only if, there is other officer duly empowered u/s 129 of the Act, the arrested person needs to be sent to such Prohibition Officer, who is empowered u/s 129 of the Act. Thus, the general powers of police are not restricted by the Act. As the offences are cognizable and further there is specific mention of police officers in aforesaid provisions, the police officers have the power to investigate such offences when

the offence are committed within their jurisdiction.

13. The petitioner has produced copies of some circulars. A copy of circular dated 4.5.1974 issued by Inspector General of Police shows that the police officers were advised not to visit the shops to find out as to whether there is breach of conditions of Abkari licence. Copy of circular dated 20.4.1982 issued by Home Department shows that even when there is definite information to police that in such a shop, the sale of liquor not covered by the licence is made, the police officers are not to visit the shop and they should report about such information to nearest Prohibition and Excise Officer. These circulars cannot take place of provisions of the law and the provisions of Cr. P.C. So, these circulars cannot help the petitioner in the proceeding like present one.

14. It was submitted for the State that the chargesheet is already filed by police. Only few papers of the investigation are produced in the present proceeding. It was submitted for the petitioner that even when chargesheet is filed, the High Court can exercise the jurisdiction u/s 482 of Cr. P.C. On this point, two reported cases were cited.

(i) G. Sagar Suri and Another Vs. State of U.P. and Others,

(ii) (2009) 1 SCC (Cri) 806 [Dhariwal Tobacco Products Limited and Ors. Vs. State of Maharashtra & Anr.

The facts of these two cases are altogether different. There cannot be dispute over the proposition that this Court has the power to quash the F.I.R., if, on the basis of material available, it can be said that there is abuse of process of law or no case, at all, can be made out against the petitioner. In view of discussion already made, it cannot be said that there is no power with police to take action in such a case. In view of the facts of the case already discussed, this Court holds that it is not desirable to use extraordinary jurisdiction or inherent powers. It needs to be observed that in such cases, it is desirable for police to inform about such incidents to nearest Prohibition Officer, Excise Department, as there is always possibility of detecting more irregularities and more offences in such a case. However, police can go on with the investigation in such a case.

15. The aforesaid discussion shows that the prayer made by the petitioner for giving compensation also cannot be considered at this stage. So the petition stands rejected.