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IN THE HIGH COURT OF DELHI AT NEW DELHI

CORAM: HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

W.P.(CRL) 626/2021 & CRL.M.As. 4590/2021 & 4591/2021; 28.02.2022

AVIJEET SALUJA *versus* STATE OF NCT OF DELHI

Delhi Excise Act, 2009 - Section 33 - Delhi Excise Rules, 2010 - Rule 20(a) Maximum limit for retail sale and individual possession of liquor - An individual, aged above 25 years, can possess 9 litres of Indian Liquor and Foreign Liquor, i.e., whisky, vodka, gin and rum, and 18 litres of beer, wine and alcopop.

A perusal of the impugned FIR No. 467/2020 reveals that 132 bottles of liquor had been recovered from the Petitioner's house, containing 51.8 litres of whisky, vodka, gin, rum, and 55.4 litres of beer, wine. Flowing from Rule 20, as the joint household of the Petitioner consists of six adults above 25 years of age, the permissible limit for possession of liquor at the Petitioner's house would be 54 litres of whisky, vodka, gin and rum, and 108 litres of beer, wine and alcopop. Therefore, there is *prima facie* no violation by the Petitioner of the Delhi Excise Act, 2009. [Para 6]

Code of Criminal Procedure, 1973 - Section 482 - Quashing of FIR - It is not necessary that a meticulous analysis of the case should be done before the trial to find out whether the case would end in conviction or acquittal. If it appears on a reading of the complaint and consideration of the allegations therein, in the light of the statement made on oath that the ingredients of the offence are disclosed, there would be no justification for the High Court to interfere. [Para 7]

Petitioner Through Ms. Priyanka Sinha, Advocate with Mr. Aditya Malhotra, Advocate. Respondent Through Mr. Ranbir Singh Kundu, ASC for the State with Ms. Sumedha Singh, Mr. Mukul Dagar, Advocates

ORDER

1. This petition filed under Articles 226 and 227 of the Constitution of India read with Section 482 Cr.P.C. seeks quashing of FIR No. 467/2020 dated 18.11.2020 registered at Police Station Hauz Khas for offence under Section 33 of the Delhi Excise Act, 2009, along with stay of investigation in the aforementioned.

2. It is stated that on 17.11.2020, information *vide* D.D. No. 76A was received at Police Station Hauz Khas regarding illicit liquor being stored at N-113, Panchsheel Park, New Delhi. Accordingly, IO/SI Jagdish, along with Ct. Jagroop reached the house where they met SI Sanjay Sharma, Excise Department and his staff. It is stated that a raid had been conducted by the Excise Department and a total of 132 bottles of liquor of both Indian and Foreign brand were found from the bar counter on the ground floor of the house. When the owner of the house, the Petitioner herein, was asked about a valid licence pertaining to the stored liquor, he stated that he had no licence. As the recovered quantity of liquor was allegedly beyond the permissible limit prescribed under the Delhi Excise Act, 2009, the instant FIR under Section 33 of the

Delhi Excise Act, 2009, was registered.

3. Ms. Priyanka Sinha, learned Counsel for the Petitioner, states that there has been no infringement of Delhi Excise Rules, 2010. She informs this Court that there are 6 adults above the age of 25 years (including the Petitioner herein) and 4 children residing at the Petitioner's residence at N- 113, Panchsheel Park, New Delhi. Relying on Rule 20(a) of the said Rules, Ms. Sinha submits that the maximum limit for individual possession of liquor for Indian Liquor and Foreign Liquor (whisky rum, gin, vodka and brandy) is nine litres, and for wine, beer, liqueur, cider and alcopop is eighteen litres. She states that as per the FIR, the liquor seized from the Petitioner's house amounts to 51.8 litres of whisky, rum, vodka, gin, and 55.4 litres of wine, beer, alcopop. Ms. Sinha, therefore, submits that the amount of liquor recovered falls within the maximum permissible limit as per Rule 20 of the Delhi Excise Rules, 2010, and that offence under Section 33 of the Delhi Excise Act, 2009, is not made out.

4. Mr. R.S. Kundu, learned ASC, appears for the State. Status report on record indicates that an application had been filed by the Petitioner before the Ld. M.M., Saket Court, New Delhi for releasing of the liquor. *Vide* Order dated 02.03.2021, direction was given to the IO by the Ld. M.M. to not take further steps in the instant matter. Further, interim protection had also been granted to the Petitioner till the disposal of the application before the Ld. M.M.

5. Rule 20 of the Delhi Excise Rules, 2010, stipulates the maximum limit for retail sale and individual possession of liquor. Violation of this Rule entails an offence under Section 33 of the Delhi Excise Act, 2009, which is punishable with imprisonment for a maximum term of three years and a fine which is not less than Rs. 50,000/-, but may extend to Rs. 1,00,000/-. The relevant portion of Rule 20 of the Delhi Excise Rules, 2010, applicable to the instant case has been reproduced as under:

"20. Maximum limit for retail sale and individual possession of liquor The maximum quantities of intoxicants specified below, which for the purposes of the Act, may be sold by retail and possessed exclusively, by an individual not below the age of twenty five years in Delhi, shall be as follows:—

(1) Indian Liquor and Foreign Liquor

(i) Indian Liquor and Foreign Liquor (Whisky rum, gin, vodka, and brandy), except wine liqueur, beer, cider and alcopop;

(a) ii) Wine, beer, liqueur, cider and alcopop; *eighteen litres;*

(iii) Indian Liquor or Foreign Liquor; *one litre while entering into Delhi from other States;*

(iv) Foreign Liquor *Two litres while entering into Delhi from other countries*

....."

6. A reading of the aforementioned Rule 20 indicates that an *individual* of above 25 years of age can possess 9 litres of whisky, vodka, gin and rum, and 18 litres of beer, wine and alcopop. A perusal of the impugned FIR No. 467/2020 reveals that 132 bottles of liquor had been recovered from the Petitioner's house, containing 51.8 litres of whisky, vodka, gin, rum, and 55.4 litres of beer, wine. Flowing from Rule 20, as the joint household of the Petitioner consists of six adults above 25 years of age, the permissible limit for possession of liquor at the Petitioner's house would be 54 litres of whisky, vodka, gin and rum, and 108 litres of beer, wine and alcopop. Therefore, there is *prima facie* no violation by the Petitioner of the Delhi Excise Act, 2009.

7. Quashing of criminal proceedings under Section 482 Cr.P.C. is called for in a case where the complaint does not disclose any offence, or is frivolous, vexatious, or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to exercise its inherent powers and quash the same. It is not necessary that a meticulous analysis of the case should be done before the trial to find out whether the case would end in conviction or acquittal. If it appears on a reading of the complaint and consideration of the allegations therein, in the light of the statement made on oath that the ingredients of the offence are disclosed, there would be no justification for the High Court to interfere [See *Kamal Shivaji Pokarnekar v. State of Maharashtra and Ors.*, **(2019) 14 SCC 350**].

8. This Court is of the opinion that the offence under Section 33 of the Delhi Excise Act, 2009, that has been alleged against the Petitioner is not made out from the facts and circumstances of the instant case, and that the quantity of liquor that has been seized from the residence of the Petitioner falls within the maximum permissible limit that has been specified under Rule 20 of the Delhi Excise Rules, 2010. This Court, therefore, deems it fit to exercise its inherent power under Section 482 Cr.P.C. to quash the impugned FIR No. 467/2020 dated 18.11.2020 registered at Police Station Hauz Khas for offence under Section 33 of the Delhi Excise Act, 2009. Resultantly, FIR No. 467/2020 dated 18.11.2020 registered at Police Station Hauz Khas for offence under Section 33 of the Delhi Excise Act, 2009 and the proceedings emanating therefrom are hereby quashed.

9. With the above observations, the instant petition is allowed, along with pending application(s), if any.