

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CRIMINAL APPLICATION NO. 2753 of 2015**

RAJENDRAKUMAR MANILAL JAISWAL

Versus

STATE OF GUJARAT & 3 other(s)

Appearance:

MR NISARG SHAH for MR NM KAPADIA(394) for the Applicant(s) No. 1

NOTICE NOT RECD BACK for the Respondent(s) No. 1

MS MD MEHTA, ASSISTANT PUBLIC PROSECUTOR for the Respondent(s)
No. 1**CORAM: HONOURABLE MR. JUSTICE NIKHIL S. KARIEL****Date : 05/05/2022****ORAL ORDER**

1. Heard learned Advocate Mr. Nisarg Shah for learned Advocate Mr. N. M. Kapadia on behalf of the applicant and learned APP Ms. M. D. Mehta on behalf of the respondent-State.

2. By way of this application, the applicant prays for quashing of Criminal Complaint being C. R. No. III-814 of 2014 registered with the Gandevi Police Station, Dist. Navsari on 29.12.2014 for offences punishable under Sections-66(1)b, 65AE, 116(2), 81, 98 and 99 of Gujarat Prohibition Act and Criminal Case No. 231 of 2015 arising from the impugned FIR pending before the Additional Chief Judicial Magistrate, Gandevi, Dist. Panchmahal.

3. Learned Advocate Mr. Shah on behalf of the applicant would submit

that while the applicant is not named in the FIR, after the investigation, since the petitioner had been named in the charge sheet, he had preferred the present application *inter alia* questioning the same, more particularly, according to the learned Advocate Mr. Shah the present applicant has been roped in just to on basis of statements of co-accused, more particularly, learned Advocate Mr. Shah submitting that even from the charge sheet the role attributed to the present applicant being that he was the principal purchaser of the prohibited goods in question. Learned Advocate Mr. Shah would further point out that while the charge sheet *inter alia* listed as such, later on, before this Court, the stand taken by the Investigating Officer was that the present applicant was the person, who had acted as a navigator for the truck in question and whereas it is for such reason that the applicant has been arraigned as an accused in connection with the impugned FIR. Learned Advocate Mr. Shah would submit that as such, there is no material in the charge sheet, to support either the allegation of the applicant being the principal purchaser of the accused or the applicant having piloted the truck in which the prohibited goods was being taken. Learned Advocate Mr. Shah would therefore submit that the impugned FIR and all further proceedings arising therefrom may be quashed by this Court.

4. As against the same, the learned APP Ms. Mehta would submit that the

charge sheet *inter alia* specifically states that the prohibited goods were to be delivered to the applicant herein. Learned APP Ms. Mehta would submit that since the investigation is completed and the Investigating Officer has filed a charge sheet, the applicant has an alternative remedy of approaching the learned Trial Court by filing an application for discharge. To a specific query by this Court, as regard the role attributed with the present applicant, learned APP Ms. Mehta, relying upon the report filed by the Investigating Officer, would submit that the applicant was piloting the truck in which the goods were being transported. Further to a specific query of this Court as to the material available with the Investigating Officer, which would show that the applicant was piloting truck in question, learned APP Ms. Mehta has sought to rely upon the call detail of the present applicant and submit that the applicant was in close contact with the other accused. As such, upon going through the call detail records, it appears that while the truck had been intercepted on the 29.12.2014, whereas the call details submitted by the Investigating Officer, are only up to the 28.12.2014. Thus, there is no material to show that the applicant was in fact piloting the vehicle in question on the date when the truck was intercepted.

5. Heard learned Advocates for the respective parties. It appears upon going through the charge sheet papers, that in the charge sheet, it is

specifically mentioned that the accused no. 1 had driven the truck belonging to the accused no. 3 with the prohibited goods, and the same was to be delivered to the present applicant. In spite of such a specific role attributed to the present applicant in the charge sheet, before this Court, the Investigating Officer, have changed their stand and have submitted that the present applicant was piloting the truck in question. Again the material relied upon by the Investigating Officer being the call detail record, would show that the said details are only up to 28.12.2014 whereas the truck in question had been intercepted on the 29.12.2014. Even otherwise from the call detail records, it is not coming out as to how the present applicant could be stated to have piloted truck in question.

6. While it may be true that the present applicant was, in touch with the other accused, but in the considered opinion of this Court without any further material, to show that the applicant was involved in the conspiracy for bringing prohibited goods in the State of Gujarat merely by alleging that the applicant was piloting the truck in question, without any material in support of such allegation the applicant could not have been arraigned as an accused in the charge sheet. It is also required to be mentioned here that the Investigating Officer in the charge sheet has attributed the role to the applicant as being the person to whom the prohibited goods were to be delivered and whereas as noted herein above, before this Court, the

Investigating Officer has changed his stand and has submitted that the applicant was piloting the truck and the prohibited goods. It therefore, clearly appears that the Investigating Authorities are changing their stand, more particularly, there being nothing in the charge sheet to support the allegation that the goods were ultimately delivered to the present applicant. Furthermore, in the considered opinion of this Court, in absence of the Investigating Officer, having filed any application for further investigation, which was considered by the learned Trial Court, having filed a charge sheet, as far as back on 24.02.2015, later on, it would not be open for the Investigating Officer to rely upon some other material, which was not forming part of the charge sheet, to allege that the present applicant was involved in the alleged crime in question.

7. Having regard to the discussion as above, in the considered opinion of this Court, the present application deserves consideration. The impugned FIR C. R. No. III-814 of 2014 registered with the Gandevi Police Station, Dist. Navsari on 29.12.2014 and Criminal Case No. 231 of 2015 arising therefrom are quashed qua the applicant. Direct Service is permitted.

Mrs. J. J. Kedia

(NIKHIL S. KARIEL,J)