

Sakul Hamid And Others Vs State Of Madhya Pradesh

Court: Madhya Pradesh High Court (Indore Bench)

Date of Decision: Feb. 14, 2023

Acts Referred: Constitution Of India, 1950 " Article 21
Code Of Criminal Procedure, 1973 " Section 41, 41A, 173(8), 482
Madhya Pradesh Excise Act, 1915 " Section 34(2)
Indian Penal Code, 1860 " Section 420, 467, 468

Hon'ble Judges: Subodh Abhyankar, J

Bench: Single Bench

Advocate: Rishi Tiwari, Hitendra Tripathi

Final Decision: Allowed

Judgement

14.12.2019,"A letter was issued by the In-Charge Officer of P.S. Nangalwadi to the Excise Department, Chandigarh requesting to provide true copies of import Permits.

26.12.2019,"Another letter was issued by the P.S. Nangalwadi to the Deputy Commissioner of Excise, KSBC requesting to provide true copies of import Permits

27.12.2019,"The Excise and Taxation Department, Chandigarh issued a letter to the Collector Excise, Barwani clarifying

that inadvertently, Sendhwa was mentioned as Dendhwa and it was also informed that the consignment of liquor was genuine.

24.01.2020,"W.P. No.2302/2020 was also filed by M/s Empire Alcobrev Pvt. Ltd., Chandigarh, the owner of the consignment before this Court seeking quashment of the impugned FIR and a further relief was also sought in the form of direction for investigation for the offences committed by the S.H.O. and his team in apprehending the said vehicle illegally. (The aforesaid petition has been subsequently dismissed by this Court on 14.09.2022 holding that the same cannot be entertained and the said company Empire Alcobrev Pvt. Ltd. was given liberty to take recourse of law.)

30.01.2020,The charge-sheet was filed on the 90th day of arrest of the petitioner.

27.02.2020,"In W.P. No.2302/2020, as an interim order, it was also directed by this Court to the Commissioner, M.P. Excise Department to conduct an inquiry and submit a report before this Court on the next date of hearing.

incarceration as they were released on bail on 15.07.2021 in M.Cr.C No. 29973/2021, be quashed and appropriate cost be also imposed on the",

respondents for filing such false case against the petitioners.,

8] Counsel for the petitioners has also drawn the attention of this Court to a proceeding initiated by the Collector, Barwani regarding confiscation of",

the vehicle and in the certified copy of the statement of Investigating Officer filed today, he has clearly stated that the liquor was being transported on",

valid documents and it also had the route from which the aforesaid liquor was to be transported with all the material particulars. However, it is also",

stated that the petitioners had violated the Permit condition by transporting sacks of garlic.,

9] Counsel for the petitioner has relied upon a decision rendered by the Supreme Court in the case of Inder Mohan Goswami and others Vs. State of,

Uttaranchal and others reported as (2007) 12 SCC 1 relevant paras of the same are 39 to 43. Counsel has also relied upon a decision rendered by the,

Supreme Court in the case of Rini Johar and Ors. Vs. State of M.P. and Ors. reported as (2016) 11 SCC 703 to submit that not only this petition be,

allowed, but heavy cost be also imposed on the respondents for initiating a false case against the petitioners.",

10] Counsel for the respondent/State, on the other hand, has opposed the prayer and it is submitted that no case for interference is made out. It is",

further submitted that no illegality has been committed by the Investigating Officer in filing the charge-sheet as the petitioners were found to be,

carrying garlic sacks above the cases of liquor, giving reasonable doubt about the suspicious transportation of liquor. Thus, it is submitted that the",

application be dismissed.,

11] Heard counsel for the parties and perused the record.,

12] From the record it is found that the date of incident in the present case is said to be 02.11.2019 as the FIR was lodged under Section 34(2) of the,

M.P. Excise Act. After the investigation, the charge-sheet has been filed on 30.01.2020 under Sections 420, 467 and 468 of the IPC and Section 34(2)",

of the M.P. Excise Act. In the charge-sheet, it is alleged that the State of Kerala had issued import permit for 1600 boxes, however, from the",

possession of the petitioners, 1541 boxes have been seized and thus, there was a difference between the boxes mentioned in the permit and the actual",

boxes and thus, the same amounts to forgery. In sum and substance, the allegations against the petitioners are that they were found to be transporting",

the liquor which fell short of the quantity mentioned in the permits under which the liquor was being transported.,

13] In the considered opinion of this Court, such short fall in itself cannot amount to any forgery, especially when the import permits and the",

documents issued by the Chandigarh Excise Department are not only authentic but they also contain the route as also the driver's name, licence",

number etc. and the Form L-38 issued by the Chandigarh Excise Department contains the said information, and on perusal of the import pass issued",

by the Kerala Excise Department at Thiruvananthapuram, the currency of permit i.e., the validity of the permit is also mentioned to be thirty days from",

the date of issue and the date of issue is 29.10.2019 whereas, the seizure was made on 02.11.2019. This Court is also of the considered opinion that all",

the documents filed along with the charge-sheet supporting the transportation of the liquor have not been found to be inaccurate or forged in any,

manner. What is alleged against the petitioners is that there was a short fall of 59 boxes of liquor in the consignment of 1600 boxes .,

14] Even otherwise, it is not the case of the prosecution that any of the documents on the basis of which the liquor was being transported were",

doubtful in any manner, and in such circumstances, this Court finds force in the submissions as advanced by the counsel for the petitioners that no",

case either under Section 34(2) or under Section 420 of IPC is made out. Although, the counsel for the petitioners has drawn the attention of this",

Court to the proceedings/record of W.P. 2302/2020 to submit that the boxes which were missing from the consignment were being used as dustbins in,

the police station, and this Court has also perused the original record of the aforesaid writ petition in which the photographs have been filed to",

substantiate the statement made by the counsel for the petitioners, however, no cognizance of such facts can be taken in the present petition. Be that",

as it may, the Supreme Court in the case of Inder Mohan Goswami v. State of Uttaranchal, (2007) 12 SCC 1, has held as under:-",

“Scope and ambit of Courts' powers under Section 482 of Cr.P.C. :-,

23. This Court in a number of cases has laid down the scope and ambit of courts' powers under Section 482 CrPC. Every High Court has,

inherent power to act ex debito justitiae to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the",

process of the court. Inherent power under Section 482 CrPC can be exercised:,,

(i) to give effect to an order under the Code;,,

(ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice.",

24. Inherent powers under Section 482 CrPC though wide have to be exercised sparingly, carefully and with great caution and only when such",

exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of,

the process leading to injustice is brought to the notice of the court, then the court would be justified in preventing injustice by invoking inherent powers",

in absence of specific provisions in the statute. “

(emphasis supplied),

15] For the reasons as assigned herein above in respect of the documents filed in the charge-sheet, this court has no hesitation to hold that it is a fit",

case to invoke the inherent powers of this court under s.482 of Cr.P.C., to further prevent the abuse of the process of court, as it would be in the",

interest of justice only that these proceedings are snapped here and now only. Accordingly, the petition stands allowed and the charge-sheet filed",

against the petitioners for offences under Sections 420, 467, 468, of IPC and Section 34(2) of M.P. Excise Act, 1915 arising out of the FIR",

No.251/2019 registered at Police Station Nagalwadi, District-Barwani (M.P.) is hereby is quashed. The petitioners are discharged from the",

aforementioned charges. All the subsequent proceedings relating to aforementioned crime pending before the Sessions Judge Barwani in S.T. No.25,

of 2020 against the petitioners are also quashed.,

16] Having quashed the FIR, this court would be failing in its duties if the plight, indignity and despair that the petitioners were made to suffer is left",

unattended by this court. Reference in this regard may be had to the decision of the Supreme Court in the case of Rini Johar(supra), para 27 of the",

same reads as under:-,

“27. In the case at hand, there has been violation of Article 21 and the petitioners were compelled to face humiliation. They have been treated with",

an attitude of insensibility. Not only there are violation of guidelines issued in D.K. Basu, there are also flagrant violation of mandate of law enshrined",

under Section 41 and Section 41-A CrPC. The investigating officers in no circumstances can flout the law with brazen proclivity. In such a situation,"

the public law remedy which has been postulated in Nilabati Behera, Sube Singh v. State of Haryana, Hardeep Singh v. State of M.P., comes into",

play. The constitutional courts taking note of suffering and humiliation are entitled to grant compensation. That has been regarded as a redeeming,

feature. In the case at hand, taking into consideration the totality of facts and circumstances, we think it appropriate to grant a sum of Rs 5,00,000",

(Rupees five lakhs only) towards compensation to each of the petitioners to be paid by the State of M.P. within three months hence. It will be open to,

the State to proceed against the erring officials, if so advised.“

(emphasis supplied),

17] It is worth mentioning here that the petitioners were arrested on 02.11.2019 and were subsequently released on bail by this Court only on,

15.07.2021 in M.Cr.C. No.29973 of 2021, thus, they have been imprisoned for a period of 1 year and 8 months in this frivolous case lodged only at the",

whims and caprice of the concerned police officers. This Court is of the considered opinion that the investigation was apparently carried out with,

malafide intentions and there was no reason for the concerned police officer to apprehend the container backed by valid documents and count each,

and every one of 1600 boxes to come to a conclusion that there is a short fall of 59 boxes out of 1600 boxes, and this shows the deliberate attempt of",

the concerned police officers to falsely implicate the petitioners for ulterior motives which amounts to misfeasance, and considering the fact that the",

petitioners have spent more than 1 year and 8 months in jail, in clear violation of the their fundamental right guaranteed under Art.21 of the",

Constitution, this Court, while taking note of the decision rendered by the Supreme Court in the case of Rini Johar and Ors. Vs. State of M.P. And",

Ors. (supra) wherein, the Supreme Court has granted a compensation of Rs.5 lakhs to each of the petitioners of the said case where they were",

arrested illegally and were required to spend three weeks and seventeen days in jail respectively, deems it appropriate to impose heavy cost on the",

State and thus, it is directed that the State shall pay the petitioners, a sum of Rs.20 lakhs (Rupees Twenty Lakhs only) each towards compensation, to",

be paid by the State of M.P. within two months time and it will be open for the State Government to proceed against the erring officer, and recover",

the said amount from them after due process of law.,

18] Petition stands disposed of accordingly.,