

(2017) 04 GUJ CK 0143

GUJARAT HIGH COURT

Case No: 32279 of 2016

KANTILAL
GOPALBHAI TANDEL

APPELLANT

 V_S STATE OF GUJARAT
& Ors

RESPONDENT

Date of Decision: April 11, 2017

Acts Referred:

- General Clauses Act, 1897, Section 3(38), Section 3(38), Section 3(38), Section 3(38), Section 3(38) - Definitions - Definitions - Definitions - Definitions - Definitions
- Code of Criminal Procedure, 1973, Section 482, Section 482, Section 482, Section 482, Section 482, Section 156, Section 156, Section 156, Section 156, Section 156, Section 190, Section 190, Section 190, Section 190, Section 190, Section 157, Section 157, Section 157, Section 157, Section 157, Section 4(1), Section 4(1), Section 4(1), Section 4(1), Section 4(1), Section 561A, Section 561A, Section 561A, Section 561A, Section 561A, Section 2(n), Section 2(n), Section 2(n), Section 2(n) - Saving of inherent powers of High Court - Saving of inherent powers of High Court - Saving of inherent powers of High Court - Saving of inherent powers of High Court - Police officers power to Investigate cognizable case - Police officers power to Investigate cognizable case - Police officers power to Investigate cognizable case - Police officers power to Investigate cognizable case - Cognizance of offences by Magistrates - Cognizance of offences by Magistrates - Cognizance of offences by Magistrates - Cognizance of offences by Magistrates - Procedure for Investigation - Procedure for Investigation - Procedure for Investigation - Procedure for Investigation - Trial of offences under the Indian Penal Code and other laws - Trial of offences under the Indian Penal Code and other laws - Trial of offences under the Indian Penal Code and other laws - Trial of offences under the Indian Penal Code and other laws - Definitions - Definitions - Definitions - Definitions - Definitions
- Indian Penal Code, 1860, Section 41, Section 41, Section 41, Section 41, Section 41, Section 40, Section 40, Section 40, Section 40, Section 40, Section 120B, Section 120B, Section 120B, Section 120B, Section 114, Section 114, Section 114, Section 114, Section 114, Section 42, Section 42, Section 42, Section 42, Section 42, Section 110, Section 110, Section 110, Section 110, Section 115, Section 115, Section 115.

Section 115, Section 115, Section 111, Section 111, Section 111, Section 111, Section 111,
Section 109, Section 109, Section 109, Section 109, Section 109, Section 107, Section 107,
Section 107, Section 107, Section 107, Section 113, Section 113, Section 113, Section 113,
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- Punishment of abetment if person abetted does act with different intention from that of
abettor - Punishment of abetment if person abetted does act with different intention from that
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committed in consequence and where no express provision is made for its punishment -
Punishment of abetment if the act abetted is committed in consequence and where no
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Punishment of abetment if the act abetted is committed in consequence and where no
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- Abetment of offence punishable with imprisonment if offence be not committed. - Abettor
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- Cattle Trespass Act, 1871, Section 20, Section 20, Section 20, Section 20, Section 20 - Power to make complaints - Power to make complaints - Power to make complaints - Power to make complaints - Power to make complaints
- Bombay Prohibition Act, 1949, Section 81, Section 81, Section 81, Section 81, Section 81, Section 83, Section 83, Section 83, Section 83, Section 83, Section 99, Section 99, Section 99, Section 99, Section 116(2), Section 116(2), Section 116(2), Section 116(2), Section 116(2), Section 98, Section 98, Section 98, Section 98, Section 98, Section 66(1)(b), Section 66(1)(b), Section 66(1)(b), Section 66(1)(b), Section 116(b), Section 116(b), Section 116(b), Section 116(b), Section 116(b), Section 65(a)(e), Section 65(a)(e), Section 65(a)(e), Section 65(a)(e) - Penalty for attempts or abetment - Penalty for attempts or abetment - Penalty for attempts or abetment - Penalty for attempts or abetment - Penalty for attempts or abetment - Penalty for conspiracy - Penalty for conspiracy - Penalty for conspiracy - Penalty for conspiracy - Return of things liable to confiscation to bonafide owners - Return of things liable to confiscation to bonafide owners - Return of things liable to confiscation to bonafide owners - Return of things liable to confiscation to bonafide owners - Procedure to be followed by Magistrates - Procedure to be followed by Magistrates - Procedure to be followed by Magistrates - Procedure to be followed by Magistrates - Things liable to confiscation - Things liable to confiscation - Things liable to confiscation - Things liable to confiscation - Things liable to confiscation - Penalty for illegal cultivation and collection of hemp and other matters - Penalty for illegal cultivation and collection of hemp and other matters - Penalty for illegal cultivation and collection of hemp and other matters - Penalty for illegal cultivation and collection of hemp and other matters - Procedure to be followed by Magistrates - Procedure to be followed by Magistrates - Procedure to be followed by Magistrates - Procedure to be followed by Magistrates - Procedure to be followed by Magistrates - Penalty for illegal import, etc of intoxicant or hemp - Penalty for illegal import, etc of intoxicant or hemp - Penalty for illegal import, etc of intoxicant or hemp - Penalty for illegal import, etc of intoxicant or hemp

Hon'ble Judges: J.B.Pardiwala

Bench: Single Bench

Advocate: RR MARSHALL, ADIL R MIRZA, SUDHANSHU S PATEL, HARDIK H DAVE, SS PATEL, AS TIMBALIA, MITESH AMIN, SHRUTI PATHAK, NISHA THAKORE, MONALI H BHATT

Final Decision: Dismissed

Judgement

1. Since the issues raised in all the captioned applications are the same, those were heard analogously and are being disposed of by this common judgment and order.
2. All the applicants before me are permanent residents of Daman, a part of the Union Territory. They all claim to be engaged in the business of sale liquor in their respective wine shops on the strength of the licence issued in their favour by the competent authority. It is their case that they have been issued licence in the Form E - 25 A, by the administration of Daman and Diu (U.T.), Department of Excise, for the retail sale of foreign liquor / Indian made foreign liquor / country liquor.
3. All the applicants before me have been arraigned as accused in the different F.I.Rs. registered by the police of the State of Gujarat at the different Police Stations falling within the State of Gujarat. All the F.I.Rs. are for the offences punishable under the provisions of the Bombay Prohibition Act. The prayer in each of the applications is to quash the First Information Reports substantially on the ground that they all being the residents of Daman (U.T.) and engaged in the business of sale of liquor on the strength of a valid licence issued by the authority, they cannot be prosecuted with the other coaccused against whom F.I.Rs. have been registered in the police stations of the State of Gujarat. To put it in other words, according to the applicants, the Bombay Prohibition Act being a local law has no application so far as Daman is concerned. Unlike the Indian Penal Code, having an extraterritorial operation, the Bombay Prohibition Act applies only within the State of Gujarat and not to the Union Territory of Daman.
4. Let me take the applications one after the other.
5. The Criminal Miscellaneous Application No.8934 of 2015 has been filed by one Kantilal Gopalbhai Tandel, the "Manager" of M/s. Bhavik Wine Shop situated at Daman. He prays that the First Information Report registered with the Vapi Town Police Station, District: Valsad bearing C.R. No.III1055 of 2014 for the offence punishable under Sections 66(1)(b), 65(A)(E), 116(B) and 81 of the Bombay Prohibition Act be quashed. This applicant has been shown as absconding till this date.
6. The Criminal Miscellaneous Application No.8954 of 2015 has been filed by the same person referred to above namely, Kantilal Gopalbhai Tandel, the "Manager" of M/s. Bhavik Wine Shop situated at Daman. He prays that the First Information Report registered with the Vapi Town Police Station, District: Valsad bearing C.R. No.III1018 of 2014 for the offence punishable under Sections 66(1)(b), 65(A)(E), 116(B) and 81 of the Bombay Prohibition Act be quashed.

7. The Criminal Miscellaneous Application No.33839 of 2016 has been filed by one Manu @ Mano Manojbhai Ramanbhai Patel, a resident of Daman carrying on business of liquor. He prays to quash the First Information Report bearing C.R. No.III370 of 2016 registered with the Valsad Rural Police Station, District: Valsad for the offence punishable under Sections 66(1)(B), 65(A)(E), 116(B), 81, 98 and 99 of the Bombay Prohibition Act.

8. The Criminal Miscellaneous Application No.33878 of 2016 has been filed by the same person referred to above namely, Manu @ Mano Manojbhai Ramanbhai Patel, praying for quashing of the First Information Report bearing C.R. No.III1219 of 2016 registered with the Pardi Police Station, District: Valsad for the offence punishable under Sections 66(1)(B), 65(A)(E), 116(B) and 81 of the Bombay Prohibition Act. He claims to the holder of a valid licence to sale liquor within the territory of Daman.

9. The Criminal Miscellaneous Application No.32279 of 2016 is filed by the applicants namely, Bhanuben Rameshbhai Patel and Rameshbhai Jagubhai Patel, husband and wife. They are also engaged in the business of sale of liquor. They pray for quashing of the First Information Report bearing C.R. No.III1377 of 2016 registered with the Olpad Police Station, District: Surat Rural for the offence punishable under Sections 66(1)(B), 65(A)(E), 116(2) and 81 of the Bombay Prohibition Act. So far as this F.I.R. is concerned, a consignment worth Rs.22,98,000/was seized within the State of Gujarat and it is the case of the police that the same was supplied by the applicants from Daman.

10. The Criminal Miscellaneous Application No.21 of 2017 is filed by the same persons referred to above namely, Bhanuben Rameshbhai Patel and Rameshbhai Jagubhai Patel, husband and wife, praying for quashing of the First Information Report bearing C.R. No.III116 of 2016 registered with the Vapi GIDC Police Station, District: Valsad for the offence punishable under Sections 66(1)(B), 65(A)(E) and 116(B) of the Prohibition Act.

11. The Criminal Miscellaneous Application No.123 of 2017 is filed by the same persons referred to above namely, Bhanuben Rameshbhai Patel and Rameshbhai Jagubhai Patel, husband and wife, praying for quashing of the First Information Report bearing C.R. No.III108 of 2016 registered with the Vasada Police Station, District: Navsari for the offence punishable under Sections 66(1)B, 65A,E, 81, 98, 99 and 116(2) of the Prohibition Act.

12. The Criminal Miscellaneous Application No.176 of 2017 is filed by the same persons referred to above namely, Bhanuben Rameshbhai Patel and Rameshbhai Jagubhai Patel, husband and wife, praying for quashing of the First Information Report bearing C.R. No.III490 of 2015 registered with the Vasada Police Station, District: Navsari for the offence punishable under Sections 66(1)B, 65A,E, 81, 98, 99 and 116(2) of the Prohibition Act.

13. The Criminal Miscellaneous Application No.177 of 2017 is filed by the same persons

referred to above namely, Bhanuben Rameshbhai Patel and Rameshbhai Jagubhai Patel, husband and wife, praying for quashing of the First Information Report bearing C.R. No.III111 of 2016 registered with the Vapi Police Station, District: Valsad for the offence punishable under Sections 66(1)B, 65A,E, and 116(B) of the Prohibition Act.

14. I have heard Mr. R.R. Marshall, the learned senior counsel assisted by the learned counsel Mr. Adil P. Mirza, Mr. Sudhanshu Patel, the learned counsel, Mr. Hardik Dave, the learned counsel and Mr. Sahil H. Dave, the learned counsel appearing for the respective applicants. I have also heard Mr. Mitesh Amin, the learned Public Prosecutor assisted by Ms. Shruti Pathak, Ms. Nisha Thakore and Ms. Monali H. Bhatt, the learned Additional Public Prosecutors appearing for the State of Gujarat.

15. All the learned counsel appearing for the applicants vehemently submitted that the registration of the First Information Reports at the different police stations within the State of Gujarat against their clients is something, which is not permissible in law, and is unnecessary harassment to them. It is submitted that all the applicants are the residents of Daman falling within the Union Territory. The Bombay Prohibition Act has no application so far as Daman is concerned. Each of the applicants have been issued a valid licence to carry on business of sale of the liquor in their respective premises. It is submitted that if a consignment of liquor is seized within the State of Gujarat and in the course of the investigation, if it is revealed that the consignment was supplied by the applicants herein, then on such evidence, the applicants cannot be arraigned as accused for the offence punishable under the provisions of the Bombay Prohibition Act. It is submitted that if a person comes at the shop and purchases liquor, then no offence is committed. However, the very same purchaser, after purchasing the liquor, if is caught within the limits of the State of Gujarat, then the seller at Daman should not be held responsible for the offence said to have been committed by the person arrested within the State of Gujarat. To put it in other words, the submission is that the applicants are carrying on business of sale of liquor in Daman and if the purchaser is caught with the bottles of liquor within the State of Gujarat, then they should not be held responsible, as they are not expected to keep a watch or ensure that the purchaser does not enter the limits of the State of Gujarat.

16. The learned counsel appearing for the respective applicants have raised a question of law. It is submitted that assuming for the moment that a conspiracy is said to have been hatched with the coaccused residing in the State of Gujarat for the supply of huge quantity of liquor, then the applicants cannot be prosecuted for the offence punishable under Section 120B of the Indian Penal Code, as Section 120B of the I.P.C. does not figure in Section 40 of the I.P.C., which defines or rather explains the meaning of the term "offence". To put it in other words, the submission is that the Bombay Prohibition Act being a local law, not applicable to a person residing and carrying on business in Daman, such person cannot be arraigned as an accused for an offence punishable under Section 120B of the I.P.C. in a case registered within the State of Gujarat, as Section 120B of the

I.P.C. does not figure in Section 40 of the I.P.C. According to the learned counsel, Section 40 of the I.P.C. would apply only when the law namely, the Bombay Prohibition Act applies to the person residing or carrying on business at Daman. The Bombay Prohibition Act has no extraterritorial operation.

17. It has also been vociferously submitted that most of the F.I.Rs. are on the basis of the statements of the coaccused. The statements of coaccused do not constitute any legal evidence so as to put the applicants herein to trial for the offence under the provisions of the Bombay Prohibition Act.

18. In such circumstances referred to above, the learned counsel appearing for the respective applicants submit that there being merit in all the applications, they be allowed and all the F.I.Rs. be quashed.

19. On the other hand, all the applications have been vehemently opposed by Mr. Mitesh Amin, the learned Public Prosecutor appearing for the State. Mr. Amin submitted that the question of law raised by the applicants as regards the applicability of the Bombay Prohibition Act to them being the residents of Daman and carrying on business of sale of liquor on the strength of the licence issued by the competent authority has no merit worth the name. According to Mr. Amin, it is very easy for the applicants to say that they should not be held responsible for the registration of the offences under the Bombay Prohibition Act within the State of Gujarat, because it is permissible for them to sell the liquor within the Union Territory. Mr. Amin submitted that the business of liquor within the Union Territory is subject to the rules and regulations.

20. Mr. Amin brought to my notice a letter dated 30th January 2017 addressed by the Excise Inspector, Daman to the Deputy Superintendent of Police, Surat as regards the sale of liquor in Daman. It reads as under:

"No.1/19/EXCEST/RRCeIlSur/20162017/1370

U.T. Administration of Daman & Diu,

Office of the Commissioner of Excise,

Excise Department, Daman.

Dated: 30 JAN 2017.

To,

The Deputy Superintendent of Police,

SC/ST Cell,

Surat Village,

Surat.

Subject: Information sought on the criminal offence registered under no.1377/2016 at Olpad Police Station.

Ref: Your letter no.Invest/Info/67/2017 dated 26/01/2017.

Sir,

With reference to your letter and the subject cited above, I am directed to furnish herewith the required information to be submitted to Gujarat High Court as informed by you.

1 As per the provisions of Rule 90(5) of Goa, Daman & Diu Excise Duty Rules, 1964, the following kinds of licenses for sale of liquor are issued in Daman and Diu (copy of Rule enclosed).

i. License for wholesale of foreign liquor, Indian Made Foreign Liquor or Country Liquor.

ii. License for retail sale of foreign liquor, Indian Made Foreign Liquor or Country Liquor for consumption on the premises.

iii. License for retail sale of foreign liquor, Indian Made Foreign Liquor or Country Liquor in sealed bottles.

2 The licensee has to follow all the provisions made under Goa, Daman and Diu Excise Duty Act and Rules, 1964.

a. Wholesaler

1. A whole can sell any quantity of liquor to a "wholesaler and retailer by obtaining necessary transport permit from the Excise Department, Daman.

2. As above.

3. As wholesaler can sell such quantity of liquor to other licensee who are holding licenses for sale of liquor in Daman.

b. Retailer

1. A licensee for retail sale of liquor in sealed bottles (wine shop) can sell 06 bottles of IMFL, 12 bottles of beer and 06 bottles of Country liquor to any customer purchasing liquor from his shop in accordance with Section 5 of Goa, Daman & Diu Excise Duty Act, 1964 and notification No.1/17/EXCEST/ 201011/ 820 dated 23/12/2010 (copy enclosed).

c. Bar and Restaurant

1. A licensee holding license for retail sale of liquor for consumption in the premises i.e. bar and restaurant can sell liquor to the consumers for consumption of liquor in the licensed premises.

3 Yes, as per the provisions of Rule 104(5) duly amended vide notification dated 29/01/2016, a person may be admitted to the existing license after obtaining written permission from the Commissioner of Excise, Daman & diu and the said license cannot be given on contract to other person to operate the same.

4 All licensed vendors who have been issued licenses have to maintain a stock register as per Rule 101 of Goa, Daman & Diu Excise Duty Rules, 1964 to keep true account of the daily transactions. (copy of Rule 101 enclosed).

5 All licensed vendors have to submit information of opening balance, purchase, sale and closing balance of every brand on monthly basis in Excise Department, Daman.

6 Import - As per the provisions of Rule 3 to Rule 10A of Goa, Daman and Diu Excise Duty Rules, 1964, all wholesale vendors for sale of liquor may import liquor from other states after following the necessary procedure of obtaining permits from Excise Department in accordance with the provisions of above Rules.

Export - As per the provisions of Rule 11 to Rule 16 of Goa, Daman & Diu Excise Duty Rules, 1964, the manufacturers of liquor may export liquor to other states after obtaining necessary export permits as per the provisions.

7 Yes, the manufacturers i.e. distilleries and breweries may export their product to other states in accordance with the provisions provided under Rule 11 to 16 of Goa, Daman & Diu Excise Rules, 1964. (copy enclosed).

Yours faithfully,

sd/-

(L.M. Vaghela)

Excise Inspector

Daman."

21. Mr. Amin, thereafter, invited my attention to a Notification issued by the Union Territory Administration of Daman and Diu dated 23rd December 2010 as regards the maximum quantity of sale of liquor. The Notification reads as under:

"U.T. Administration of Daman & Diu

Office of the Commissioner of Excise,

No.1/17/EXCEstt/20102011/820

Dated: 23/12/2010.

NOTIFICATION

In exercise of the powers conferred by Section 22 of the Goa, Daman and Diu Excise Duty Act, 1964, the Administrator of Daman & Diu is hereby partially amends the Notification in Chapter I of Goa, Daman and Diu (Excise Duty) Rules, 1964 in para 2. Definition - In these Rules, unless the context otherwise requires: (h) "retail vendor" means a dealer who is licensed as such to sell liquor in quantity not exceeding 4,500 liters or 06 quart bottles in one transaction;"

The Notification shall come into force with immediate effect.

By order and in the name of the

Administrator of Daman & Diu.

Sd/-

(P.J. Bamania)

Joint Secretary (Excise),

Daman & Diu.

22. Mr. Amin, thereafter, brought to my notice one another Notification dated 29th January 2016 with regard to the rules called the Goa, Daman and Diu, Excise Duty (Amendment) Rules, 2016. The same reads as under:

Administrator"s Secretariat

Excise Department, Daman.

No.3/1518/EXCADM/201516/ 1517/9

Dated: 29 Jan 2016

NOTIFICATION

In exercise of the powers conferred by Section 22 of Goa, Daman & Diu Excise Duty Act, 1964, as applicable to the Union Territory of Daman & Diu, the Administrator of Daman & Diu hereby makes the following Rule to further amend Goa, Daman & Diu Excise Duty Rules, 1964 (hereinafter to as the Principal Rules), namely:-

1. Short Title, Extent and Commencement

(1)This Rule may be called the Goa, Daman & Diu Excise Duty (Amendment) Rules, 2016,

(2)This Rule shall extend to the whole of the Union Territory of Daman & Diu

(3)This Rule shall come into force on and from the date of their publication in the Official Gazette.

2. Amendment of Sub Rule(5) of Rule 104

The SubRules(5) of Rule 104 of the Principal Rule, shall be replaced by the following words:

(5) "When a license has been granted to an individual or an association of individuals such as a firm, or a legal person such as a company, no new individual shall be admitted to or existing one withdrawn from the said license without the written permission from the Commissioner and on payment of prescribed fee."

This notification shall come into force with immediate effect.

By order and in the name of

Administrator of Daman & Diu and

DNH

sd/-

(Kishore Bamanian)

Joint Secretary (Taxation)"

23. Mr. Amin, thereafter, invited my attention to the rules as regards the Export of Liquor. It reads as under:

"11. Methods of export. Subject to the provisions of the Act and the following rules, Indian made foreign liquor manufactured in the territory may be exported from the distillery, brewery, warehouse or, licensed wholesale vendors premises either,

(a) on execution of a bond for payment of duty in the Territory ;

or

(b) on payment of duty in the Territory (Vide Annexure V) .

12. Application to be made to the Commissioner(1) Any manufacturer or dealer desirous of exporting liquor, shall submit an application in Form E3 to the Commissioner

(2) The application must specify:

(a) the name of the consignor

(b) the name of the consignee

(c) the description", quantity and strength of each kind of liquor to be exported,

(d) the route of export and the Checkpost at the exit from the Territory.

(3) Every such application must be accompanied by;

(a) a permit or licence from the appropriate Wise authority of the State or Union Territory to which the liquor is to be exported authorising the import of the liquor, and

(b) either a duly executed special bond or a reference to the general bond in force, or document proving the payment of duty, or

(c) a receipt of challan for having paid in the Government Treasury the duty in respect of liquor to be exported.

13. Procedure for export permit. (1) If the application is found to be in order , the Commissioner . shall issue permit in Form E4, in quadruplicate, specifying the name, quantity and strength" of each kind of liquor. One copy of the permit shall be delivered to the exporter: second copy will be forwarded to the appropriate Excise Officer of the State or Union Territory to which the liquor is to be taken, the third will be sent to the Excise Inspector of the Taluka and the fourth will be retained for record.

(2) Within a reasonable time to be fixed by the Commissioner and specified in the bond or permit, as the case " may be, the exporter shall produce before the Assistant Excise Commissioner of the Union Territory, a copy of the import permit endorsed with a certificate signed by the appropriate Excise Officer of State or Union Territory into which the import is made certifying the due arrival or otherwise of the liquor at its destination.

14. Extension of time. The Commissioner, on written application , may extend for good and sufficient reasons, the currency of the permit - or bond for due arrival of the liquor at its destination.

15. Bond when to be discharged . (1) In the case of liquor exported under special bond, the Commissioner shall discharge the bond on receipt of the certificate mentioned in rule 13(2) provided that none of the conditions of the bond have been infringed.

(2) If the certificate is not received within the time mentioned in the bond or permit or if on receipt of the certificate it appears that any of the conditions of the bond have been infringed, the Commissioner shall forthwith take the necessary steps to recover from the executant or his sureties the penalty, if any, due under the bond.

16. Particulars to be "painted on cask". (1) On each bottle, cask or other vessel containing Indian made foreign liquor there shall be legibly cut or labelled:

(i) the name and mark of the distillery or brewery of the Territory

(ii) the number of the cask or other vessel and its capacity;

(iii) the nature, quantity and strength of its content.

(2) Samples of the labels and markings shall be lodged with the Commissioner for his record. The labels of the bottle, cask or vessel of liquor for export clearly contain the words in red "For Export".

17. Execution of bonds. The bond to be executed by the importer or exporter for payment of duty shall be either a general or a special bond in Form E5 or E6, as the case may be, with two sureties acceptable to the Commissioner.

18. Payment of Fee. The fee for import or export permit shall be paid in the form of Court fee stamps to be affixed on the application made therefor.

19. Transport - A permit under Section 5 shall be in Form E7.

19A. (1) No retail vendor of Indian made foreign liquor or foreign liquor whose licensed premises are situated in Daman or Diu shall be entitled to a transport permit for transporting liquor, whether the Indian made liquor or foreign liquor or foreign liquor, excess of such yearly quota as may be fixed by the Commissioner with the previous approval of the Government after ascertaining the local requirement from the Collector, Daman or the Civil Administrator, Diu, as the case may be.

(2) Notwithstanding that a transport permit has been granted to any licensed retail vendor for the year 1974-75 before the coming into force of this rule, the transport permit of such vendor shall be limited to the quota, fixed under subrule (1).

Provided that the quota for which " transport permit has per. Been granted is less than the quota as fixed under. Subrule (1), the retail vendor shall be entitled to - the transport permit for the balance quantity.

Provided further the wholesale vendor having a retail licence shall not be entitled to" a separate quota as a retailer.

(3) Notwithstanding anything contained in subrule (I), but subject to rule 19, a retail vendor of Indian Made Foreign Liquor or Foreign Liquor whose licensed premises are situated in Daman or Diu, may transport beer.

19B. Transport of liquor for personal consumption. Any person going out of Goa, Daman and Diu may on application made by him be granted a permit by the Excise Commissioner in the prescribed form to carry with him duty paid Indian made foreign liquor and/or Imported foreign liquor in such quantity as is prescribed in the State or Union Territory, where the import of such liquor is permitted, subject to such conditions as the Commissioner may impose. The fee for each permit shall be Re. 1/which should be paid in the form of court fee stamp to be affixed on the application made therefor.

20. Permit for possession. (1) Any person desirous of obtaining a permit for the possession of Indian made foreign liquor under section 8, shall make an application in Form E8 stating:

(a) the quantity required and the date on which it is to be purchased;

(b) the occasion which renders the. Purchase necessary;

(c) the place where the liquor is to be kept and consumed.

(2) The permit shall be granted in Form E9."

24. Mr. Amin, thereafter, invited my attention to few relevant provisions of the Bombay Prohibition Act.

25. Section 81 provides for "penalty for attempts or abetment". It reads as under:

"81. Penalty for attempts or abetment- Whoever attempts to commit or abets the commission of an offence under this Act shall, on conviction, be punished for such attempt or abetment with the same punishment as is provided for the principal offence."

26. Section 83 of the Bombay Prohibition Act provides for "penalty for conspiracy". It reads as under:

"83. Penalty for conspiracy When two or more persons agree

(a) to commit or cause to be committed any offence under this Act,

or

(b) [a] [***] to commit a breach of a condition of a licence, permit, pass or authorization,

each of such persons shall, on conviction, be punished with imprisonment for a period which may extend to two years or with fine which may extend to one thousand rupees or with both."

27. Mr. Amin submitted that despite the State of Gujarat being a dry State on account of the applicability of the Bombay Prohibition Act, the trade of liquor within the State of Gujarat is at its peak. According to Mr. Amin, 90% of the contraband seized and recovered within the State of Gujarat is supplied from Daman. Contraband worth lakhs of rupees is seized at regular interval on the strength of information. The applicants herein cannot get away with their liability on the specious plea that the Bombay Prohibition Act is not applicable in the Union Territory of Daman.

28. According to Mr. Amin, all the F.I.Rs. are at the initial stage of investigation. Some of the applicants are still absconding. Against some of the applicants, many cases have been registered. The investigation carried out so far has revealed that the contraband recovered and seized was supplied by the applicants herein after a wellhatched conspiracy and modus operandi. At such a crucial stage of the investigation, the F.I.Rs. should not be quashed. Mr. Amin submitted that no person can come at the shop and purchase liquor worth lacs. In fact, such sale is permissible according to the terms of licence. In such circumstances, all the applicants, although may be residing in Daman and carrying on business in Daman, yet are part and parcel of the offence registered at the different police stations within the State of Gujarat. With the indiscriminate supply of liquor worth lakhs of rupees, the evasion of excise duty has also come to the notice of the authority to the tune of lakhs of rupees. Mr. Amin submitted that if a Truck fully loaded with bottles of liquor is seized within the State of Gujarat and it is found that the same was dispatched from Daman, then more than a prima facie case could be said to have been made out of abetment or conspiracy with the other coaccused. It is not easy

overnight to load one Truck with liquor worth lakhs of rupees. It takes lot of planning and preparation.

29. Mr. Amin submitted that the contention as regards the applicability of Section 40 of the Indian Penal Code is one without any merit. He submitted that at the initial stage, even the statements of the coaccused may give some clue to go deep into the investigation. The argument as regards the statements of the coaccused should fail at this point of time, more particularly, when the investigation is at the threshold.

30. In such circumstances referred to above, Mr. Amin prays that there being no merit in any of the applications, the same be rejected.

31. Having heard the learned counsel appearing for the parties and having considered the materials on record, the only question that falls for my consideration is whether the F.I.Rs. should be quashed.

32. The Union Territory comprises the present day State of Goa and the two small coastal enclaves of Daman and Diu on the coast of Gujarat. The territory, along with Dadra and Nagar Haveli comprise Portuguese India. In the year 1987, Goa was granted statehood, and Daman and Diu was made a separate Union Territory. The Territory was incorporated into India after the annexation of Portuguese India in 1961. The Union Territories in India are those regions that are too small to be a State and too unique to be merged as a part of an another State. The Union Territories of Indian have special rights and status due to their constitutional formation and development. The status of "Union Territory" may be assigned to an Indian subjurisdiction for the reasons such as safeguarding the rights of indigenous cultures, averting political turmoil relating to matters of governance, and so on. Each and every Union Territory was form out of a specific reason. For over 450 years, the coastal enclaves of Daman and Diu on the Arabian Sea coast were part of Portuguese India, along with Goa and Dadra and Nagar Haveli. Goa, Daman and Diu were incorporated into the Republic of India on 19th December 1961, by a military conquest. The Portugal did not recognise the Indian annexation of these territories until 1974.

33. Although the State of Gujarat is a dry State on account of the applicability of the Bombay Prohibition Act, yet the prohibition policy of the State has not worked well and one of the reasons is the easy entry point in the State of Gujarat for the liquor to be brought in. Daman is one big hub where liquor is available in abundance and large quantity of liquor is being illegally brought into the State of Gujarat from Daman.

34. Let me look into the contention as regards Section 40 of the I.P.C. Section 40 of the I.P.C. reads as under:

"40. "Offence"

Except in the b [Chapters] and sections mentioned in clauses 2 and 3 of this section, the word "offence" denotes a thing made punishable by this Code.

In Chapter IV, c [Chapter VA] and in the following sections, namely, sections d [64, 65, 66, e [67], 71], 109, 110, 112, 114, 115, 116, 117, 187, 194, 195, 203, 211, 213, 214, 221, 222, 223, 224, 225, 327, 328, 329, 330, 331, 347, 348, 388, 389 and 445, the word "offence" denotes a thing punishable under this Code, or under any special or local law as hereinafter defined.

And in sections 141, 176, 177, 201, 202, 212, 216 and 441, the word "offence" has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.]"

35. The general Rule is that it is only the act or omission, which is made punishable by the Indian Penal Code, that will be an offence for the purposes of the I.P.C. However, this general rule is subject to the exception as detailed in the section itself. Under the General Clauses Act, the word "offence" means any act or omission made punishable by any law for the time being in force. The word "punishable" means a "punishable offence" or an act or omission to which punishment is attached under the law. Section 40 of the I.P.C. refers to not only an act or omission which is made punishable under the Code as an offence, but to that act or omission also which has been made punishable under any special or local law in cases as specified in paragraphs 2 and 3 of the section. Thus, with the exception of the provisions specified in paragraphs 2 and 3, no other act or omission made punishable under a special or local law will fall within the term "offence", as used in the Code. In regard to the sections of the Code specified in para 3, the word "offence" used in such section will include acts made punishable under a special or local law only in those cases in which the prescribed punishment for such acts is imprisonment for six months or onwards.

The expression "special law" and "local law" have been defined in Sections 41 and 42 of the Code. The words "special law" referred to a law, which is not applicable generally, but it applies only to a particular or specified subject of class of subjects. In some cases, the same law may be a general law in regard to a particular subject and a special law with regard to some other subject. "Local law" is a law applicable only to a particular part of India.

The abetment of an offence is in itself an offence within the meaning of Section 40 of the Code, and as such the provisions of the Code relating to abetment are applicable also to the offences under the special and local laws and such abetment is punishable.

36. To appreciate the submissions canvassed on behalf of the applicants, it is necessary to refer to Sections 156 and 157 of the Cr.P.C., which are as follows:

"156. Police Officer"s power to investigate cognizable case : (1) Any officer in charge of a police station may, without the order of a Magistrate, investigate, any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered u/S. 190 may order such an investigation as above mentioned.

157. Procedure for investigation : (1) If, from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered u/S.156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers not below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed to the spot, to investigate the facts and circumstances of the case, and if necessary to take measures for the discovery and arrest of the offender;

Provided that :

(a) When information as to the commission of any such offence is given against any person by name and the case is not of a serious nature the officer in charge of a police station need not proceed in person or depute a subordinate officer to make an investigation on the spot;

(b) if it appears to the officer in charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.

(2) In each of the cases mentioned in cls. (a) and (b) of the proviso to subs. (1), the officer in charge of the police station shall state in his report his reasons for not fully complying with the requirements of that subsection, and in the case mentioned in cl. (b) of the said proviso, the officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by the State Government, the fact that he will not

investigate the case or cause it to be investigated."

The above sections, as seen, confer a wide power on the police to investigate into any offence, if they have suspicion regarding commission of such an offence by any person. As regards the definition of "offence", it is necessary to extract Section 2(n) of the Cr. P.C., and Section 40 of the I.P.C. Section 2(n) of the Cr. P.C. reads :

"(n)"Offence" means any act or omission made punishable by any law for the time being in force and includes any act in respect of which a complaint may be u/ S. 20 of the Cattle Trespass Act, 1871 (1 of 1871)."

37. The definition of the term "offence" as provided in Section 2(n) of the Cr.P.C. consists of two parts. The first part is an initial definition and the second part is an extensional one. The first part corresponds with the definition in Section 3(38) of the General Clauses Act, 1897, and the second part in Section 4(1) of the Code of Criminal Procedure. From a reading of Section 2(n) of the Cr.P.C. and Section 40 of the I.P.C., it is clear that Section 40 of the I.P.C. refers to the offences prescribed by the Indian Penal Code. While Section 2(n) of the Cr.P.C. refers to offences under the different laws, apart from those under the I.P.C. Thus, the definition of "offence" under Section 2(n) of the Cr.P.C. is wider enough to enable the police to investigate into the offences under the other enactments also, apart from those under the I.P.C.

38. I find it extremely difficult at this point of time, more particularly, when all the F.I.Rs. are at the stage of investigation to take the view that the applicants are not liable to be prosecuted for the offences punishable under the provisions of the Bombay Prohibition Act with regard to the different F.I.Rs. registered in the State of Gujarat. The clandestine manner in which the consignments are supplied and brought within the State of Gujarat, speaks volumes as regards the complicity of the applicants in one way or the other in the alleged offence. Only the proper investigation would reveal the exact involvement of the applicants in the alleged offence.

39. Considerable emphasis has been laid upon the fact that the acts and omissions, which amount to a criminal offence under the Bombay Prohibition Act, have not been incorporated into the body of the Indian Penal Code as separate or distinct offence. I agree that it is so, but I am clearly of the opinion that this makes no difference. It would have made the Indian Penal Code extremely cumbersome, if the offences under the various special and local Acts were included as separate offences under the Indian Penal Code and punishments separately provided for them in the said Code. To avoid repetition, the provisions have been made in the Indian Penal Code with reference to the offences generally and distinct punishment has been provided for them in Sections 109 to 117 of the Indian Penal Code. Where abetments of offences, under the special or local Act, satisfy the conditions of Sections 109 to 117, all the ingredients constituting an offence are complete, and there does not appear to be any reason why a person against whom all the ingredients of these offences are present should not be prosecuted under those sections.

40. Having regard to the materials on record, prima facie, I am of the view that the applicants

herein could be said to have abetted the commission of the offences punishable under the Bombay Prohibition Act. Section 107 of the I.P.C. explains what amounts to abetment. Abetment can be by way of instigation, it can be by way of aiding any act or illegal omission and it can be in the form of a conspiracy. To put it in other words, Clause secondly of Section 107 of the I.P.C. provides that a person abets the doing of a thing, if he engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing.

41. I am fortified in taking the aforesaid view by a Division Bench decision of the Madras High Court in the case of V. Sesha Ayyar vs. Venkatasubba Chetty and others [1924 Madras 487]. In the said case, a revision petition was filed against the order of the SubDivisional Magistrate acquitting the accused persons charged under Section 55(1) of the Madras Act (V of 1920) and Section 109 of the I.P.C. The accused persons therein were charged with the abetment of an election offence. The argument before the Court was that although abetment of an election offence was punishable under the I.P.C. as amended, yet the Act V of 1920 made no provision for the abetment of election offences and it was not permissible to borrow the provisions of the I.P.C., where that Code itself made provision for the offence in question. The Bench proceeded to hold as under:

"By section 107, Indian Penal Code, a person abets the "doing of a thing" in three ways therein set out. If "the thing" in question is an offence, then the abetment of it becomes an offence (section 108) and the "offence of abetment" is constituted (Section 108, explanation 2), which is thus a separate and distinct offence. "Offence" by section 40 (paragraph 1) and section 108A means: (1) a thing made punishable by the Indian Penal Code; and (2) a thing made punishable by the Indian Penal Code though it is committed without and beyond British India. Consequently, the abetment of an offence means the abetment in British India of a thing made punishable by the Indian Penal Code. Section 40, Indian Penal Code, has, however, been extended by amendment. The limitation in paragraph 1, confining an offence to a thing punishable by the Indian Penal Code, has been relaxed and "offence" in Section 109 (inter alia) now denotes a thing punishable under the Code, or any special or local law. There is no doubt that Madras Act V of 1920 is a local law and it, therefore, seems clear that section 109 can be applied to a thing punishable under it. As pointed out, abetment is a separate and distinct offence, provided the thing abetted is an offence; and the thing abetted here is made an offence by the second paragraph to section 40. Indian Penal Code. Section 26 of the General Clauses Act shows that an act may constitute an offence under two or more enactments. In Probodh Chandra v. Corporation of Calcutta [(1990) 24 C.W.N. 196], Section 40, Indian Penal Code, was held applicable in order to constitute abetment of an offence under a local law the Calcutta Municipal Act. I am of opinion that the accused Nos.2 to 5 could legally be charged, under section 55(1) of Madras Act V of 1920 and Section 109, Indian Penal Code. This Criminal Revision Case must be allowed."

42. On the same line, there are three other decisions which I may refer to and rely upon: (1) Gopilal and others vs. Emperor [AIR (32) 1945 Nagpur 186], (2) King, Emperor vs. Pandu Vithu

Savant [AIR 1924 Bombay 489], and (3) Probodh Chandra Bose vs. Corporation of Calcutta [AIR 1920 Calcutta 321].

43. The investigation will also have be conducted keeping in mind many aspects like breach of the terms of licence, other Notifications applicable, etc.

44. I am of the view that I should not interfere at this stage and permit the police to complete the investigation in accordance with law. The case on hand is not one falling within any of the categories laid down by the Supreme Court in the case of State of Haryana vs. Bhajanlal's [AIR 1992 SC 604]. I may quote the observations of the Supreme Court as contained in para 108 of the decision of Bhajanlal (supra):

"In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2. Where the allegations in the First Information Report and other materials, if any, accompanying the F. I. R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a noncognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

5. Where the allegations made in the F.I.R. or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion

that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/ or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/ or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

I may also quote the observations as contained in para 109 of the decision of Bhajanlal (supra):

"We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice."

45. Here it is relevant to mention that the Supreme Court in *Dharamvir vs. State of M.P.* [AIR 1974 SC 1156 : 1974 Cri. L.J. 812] while dealing with the question of quashing investigation by exercising the powers under Section 561A of the old Cr. P.C., (corresponding to Section 482 of the present Cr. P.C.) held that the Courts would not quash the investigation since it amounts to stopping the process of investigation and this decision squarely applies to the facts of the present case.

46. The Privy Council in *Emperor vs. Nazir Ahmed* [AIR 1945 PC 18 : 1946 Cri. L.J. 413] has laid down that in cases of cognizable offences, receipt and recording of a first information is not a condition precedent to the setting in motion of a criminal investigation. In view of this decision, the learned counsel cannot be permitted to put forth the submission that there is no report made by any one that a theft took place in Nacharam Studios and therefore no investigation into such an unreported offence can go on.

47. This litigation has been contested by the State tooth and nail and why not. The reason is obvious. I take judicial notice of the fact that the prohibition policy in the State of Gujarat has not been able to yield positive results. One may not find an open bar on a public street, but the number of cases, as on date, pending in the different Courts in the State of Gujarat, bears eloquent testimony to the fact that either the policy is not effective or something is wrong with the implementation of the law. Out of 3,99,221 criminal cases pending as on 28th February

2017 in the State of Gujarat, 55,645 cases are under the Bombay Prohibition Act. It is high time that the Central Government should consider denotifying Daman as a part of the Union Territory and make it a part of the State of Gujarat so as to make the Prohibition Act applicable, which may have its own effect, and more particularly, after the recent amendment in the Act, providing more stringent provisions. It is for the Central Government to consider this issue at the earliest before it is too late in the day.

48. With the above, all the applications fail and are hereby rejected. Notice, if any, stands discharged. The adinterim order, if any, stands vacated forthwith.

49. It is needless to clarify that ultimately, at the end of the investigation, if chargesheet is filed against any of the applicants herein and there is no legal evidence to connect any of the applicants with the alleged offence, except the statements of the coaccused, then it shall be open for the applicants to challenge the chargesheet before the appropriate forum in accordance with law.

50. In view of the order passed in the main matter, the connected Criminal Miscellaneous Application also stands disposed of.