
(2014) 05 MP CK 0224

Madhya Pradesh High Court

Case No: M.Cr.C. No. 8924/2013

Dinesh Rai

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision: May 6, 2014

Acts Referred:

- Central Excises and Salt Act, 1944 - Section 34(2)

Hon'ble Judges: T.K. Kaushal, J

Bench: Single Bench

Advocate: Sankalp Kochar, Learned Counsel, Advocate for the Appellant; Y.D. Yadav,
Learned Panel Lawyer, Advocate for the Respondent

Final Decision: Dismissed

Judgement

Tarun Kumar Kaushal, J.

Present petition is directed, claiming parity with case of co-accused Mahendra Singh, whose petition for quashment was allowed on 21.1.2014 in M.Cr.C. No. 15847/2013 by this Court, for quashment of the FIR.

2. According to prosecution, on 26.3.2013 at 1.30 mid night Police Officials at Police Chowki Footera District Damoh received information regarding illegal transportation of liquor from the Government shop in Maruti Van bearing registration No. M.P.-20-BA-3674. Police Officials raided the shop and surrounded the scene of the occurrence, but could catch only two accused persons, rest of the accused persons succeeded to run away.

3. Learned counsel for the petitioner submits that petitioner has been implicated in this case on the basis of fact of his owner ship of the Maruti Van which was found involved in transportation of liquor. The aforesaid vehicle was rented out by him to co-accused and for its day to day operation petitioner is not responsible in any manner. Further submits that petitioner was not present on the scene of the occurrence because neither he was shown to be the person who caught on the spot

and nor as a person, who ran away from the scene of the occurrence. For co-accused Mahendra who was shown to be an accused, who ran away from the scene of the occurrence, this proceeding has already been quashed by the co-ordinate Bench of this Court in M.Cr.C. No. 15847/2013.

4. On perusal of the FIR, it becomes evidently clear that accused Mahendra was present on the scene of the occurrence and was seen by the police officer. This fact has not been brought to the notice of this Court and was not considered in the order dated 21.1.2014 by this Court, therefore, I see no parity in the case of the petitioner to that of the case of Mahendra Singh.

5. In so far as the fact of "rent out" the vehicle is concerned, it is a matter of trial and can very well be decided by the trial Court at appropriate stage. In this case FIR has been registered on the same day without any delay and in which the name of the present petitioner is clearly appeared at serial no. 6 in the list of the accused. In such a situation, for having unauthorized possession of 500 liters of bulk liquor in a vehicle of which the petitioner is the owner, prima facie presumption is certainly available against him. What would be the effect of the absence of the petitioner from the scene of the occurrence is the matter of trial.

6. In my considered opinion, in such a situation, continuation of trial is not an instance of abuse of process of law. Charge sheet has been prepared showing that the offence u/s 34(2) of the Excise Act has been committed in respect of about 500 liters of bulk liquor. Involvement of the petitioner in it cannot be ruled out. Rest of the things are the matter of trial and will be decided by the trial Court.

7. This petition is dismissed.