HIGH COURT OF MADHYA PRADESH
MCRC No.12218/2018
Vijay Kumar vs. State of MP. & Ors.

Gwalior, dtd. 11/05/2018

Shri Akhil Sharma, Counsel for the applicant.

Shri Prakhar Dhengula, Public Prosecutor for the State.

Heard on the question of admission.

This application under Section 482 of Cr.P.C. has been filed for quashing the F.I.R. in crime no. 601/2017 registered at Police Station District Excise Office, Gwalior for offence under Section 34(1)(a),34(1)(b) and Section 34(2) of M.P. Excise Act.

It is not out of place to mention here, that the application for grant of anticipatory bail, filed by the applicant, has already been rejected by this Court by a detailed order dated 13-3-2018 passed in M.Cr.C. No. 4459 of 2018. However, inspite of the fact that the charge-sheet has been filed, but the applicant is still absconding and has not surrendered.

It is submitted by the Counsel for the applicant that the applicant is the authorized signatory of M/s Sakhi Rail Parcel Services and Sakhi Rail Parcel Services had booked consignment from transporting it from H. Nizamuddin Railway Station to Bhopal Railway Station. When train No. 12156 reached Gwalior Station on 11-3-2017, then it was found that the parcel coach was overloaded, therefore, 181 cartoons were unloaded. During unloading, the smell of liquor started coming out from one cartoon because of breaking of one bottle. Accordingly, all the unloaded cartoons were checked and it was found that 22 cartoons

were carrying liquor bottles. It is submitted that although the transportation of liquor through Railway is prohibited as per the agreement executed between the Railways and Sakhi Rail Parcel Services, and if the liquor was being transported in contravention of the agreement, then as per clause 9.14 of the agreement, in case of false declaration of any commodity, the lease holder and owner of the goods shall be punishable under Section 163 of Indian Railway Act, 1989. The consignment was booked by Green Freight Carrier and since, the contents of the cartoons were not declared by Green Freight Carrier, therefore, no declaration was given by the Sakhi Rail Parcel Services with regard to the contents of the cartoons and the applicant was not aware of the fact that 22 cartoons, booked by Green Freight Carrier, were carrying liquor, which is a prohibited article as per the agreement. It is submitted that as the applicant was not aware of the contents of the cartoons, therefore, no *mens rea* can be attributed to the applicant, and thus, no offence under Section 34(1)(a), 34(1)(b) and Section 34(2) of M.P. Excise Act would be made out. It is further submitted that the prosecution of the applicant would be nothing, but would be contrary to the interest of justice.

Per contra, it is submitted by the Counsel for the State that if the entire allegations are considered, then it would be clear that not a single step was taken in accordance with law. Whether the applicant was a part of the conspiracy or not and whether there was any *mens rea* on the part of the applicant or not are the highly disputed questions of fact, which cannot be decided at this

early stage and the submissions made by the Counsel for the applicant are his defence, which are required to be proved in the trial.

By referring to the copy of the charge sheet filed by the applicant along with this application, it is submitted by the Counsel for the State that the applicant has deliberately not filed the copy of the documents annexed along with the charge sheet. It is submitted by the counsel for the State that Sayaji Hotel Limited, Indore applied for importing 960 bottles of English wine from M/s Saksham Beverages Private Limited, Gurgaon (Haryana) and permission was sought from the Excise Department and accordingly, on the recommendation of Assistant Excise Commissioner, Indore, the Assistant Excise Commissioner, Moti Mahal, Gwalior issued a permit to import 960 bottles of English wine including 480 bottles of 355 ml of beer, 480 bottles of 330 ml of beer and 30 bottles of 750 ml of wine. Accordingly, M/s. Saksham Beverages Private Limited issued a builty for transportation of 960 bottles of liquor. Thereafter, instead of 30 bottles of plain wine & 960 bottles of bear, M/s. Saksham Beverages Private Limited sold the following brand and quantity of liquor :

S.No.	Brand	Quantity in pieces
1	Stella Artos Beer (330 ML)	120
2	Jagermister (750 ML) (For Sale in Haryana Only)	24
3	Hoegaarden Beer (330 ML)	480
4	Coron Extra (355 ML)	240
5	Asahi Beer (330 ML)	120
6	Brichheto Red Wine (750 ML)	5

Thus, the liquor supplied by M/s. Saksham Beverages Private Limited was contrary to the permission granted by the Excise Department.

It is further submitted that an information has been collected from the Excise Department, Gurugram with regard to the area of operation of M/s. Saksham Beverages Private Limited and, by letter dated 19-9-2017, the following reply was given by Deputy Excise and Taxation Commissioner (Excise), Gurugram (West)

1. M/s Saksham Beverages Pvt. Limited Gurguram was granted L-1BF license for the year 2016-17.
2. (L-1BF) License holder can trade within the State of Haryana and cannot trade outside the State of Haryana.
3. M/s Saksham Beverages Pvt. Limited was never permitted to export liquor outside the State of Haryana.
4. No Export permit was issued to M/s Saksham Beverages Pvt. Limited, Gurguram.
5. "For Sale in Haryana" means that the liquor shall be sold within the State of Haryana only.

Therefore, it is clear that M/s Saksham Bewerages Pvt. Limited was not competent to export liquor outside the State of Haryana.

Thus, Liquor supplied by M/s Saksham Bewerages Pvt. Limited was not only contrary to the permission granted by the Excise Department, but was contrary to the license granted to M/s Saksham Beverages Pvt. Limited. It is submitted that various other communications were done by the Investigating Officer with the authorities of State of Haryana, from which it is clear that, M/s Saksham Beverages Pvt. Limited, Gurugram, had illegally sold the

liquor, contrary to the terms and conditions of license as well as contrary to the permission granted by the Excise Department. It is submitted that not only M/s Saksham Beverages Pvt. Limited, Gurugram, acted contrary to law, but even the Excise Department as well as Sayaji Hotel, Indore, acted contrary to law. It is further submitted that from Builty issued by M/s Saksham Bewerages Pvt. Limited, Gurugram, in favor of Sayaji Hotel Limited, Indore, it is clear that the details of truck number, transport permit issued by the Excise Department of State of Haryana, the name of driver of the Truck or even the route of transportation was not mentioned. Thus, in order to avoid complications at the toll tax booth, M/s Saksham Bewerages Pvt. Limited, Gurugram, decided to transport the liquor through railway. Accordingly, M/s Sakhi Rail Parcel Services, booked 22 boxes of liquor for transportation from Railway Station Hazrat Nizamuddin to Habibganj Railway Station, Bhopal. It is further submitted that although Sayaji Hotel, is situated in Indore, but deliberately, the liquor was booked for Habibganj Railway Station, Bhopal. The road distance between Bhopal and Indore is around 250 Kms and direct trains from H. Nizamuddin to Bhopal or Habibganj Railway Station are available. It is further submitted that no declaration was made by M/s Sakhi Rail Parcel Services with regard to the contents of the Boxes, whereas it is specifically provided under the agreement between Railway and M/s Sakhi Rail Parcel Services that no prohibited good would be transported, therefore, it was obligatory on the part of M/s Sakhi Rail Parcel Services to find out that whether 22

boxes contains permissible goods or not? This was deliberately not checked by M/s Sakhi Rail Parcel Services, otherwise, it was not possible for M/s Sakhi Rail Parcel Services to transport the liquor. No declaration was made deliberately, on the boxes, with regard to the contents of the boxes, so as to illegally transport the liquor through Railway. It is further submitted that by letter dated 11-3-2017, the Chief Parcel Supervisor, North-Central Railway, Gwalior, had specifically informed that transportation of liquor through Railway is prohibited. Even otherwise, as per clause 9.11 of the agreement, executed between the Railways and M/s Sakhi Rail Parcel Service, it is clear that the commodities, which were prohibited by the Railway, shall in no case, be allowed to be loaded in the leased parcel space.

Clause 9.11 of the agreement reads as under :

> "9.11. Commodities listed in Red Tariff, offensive, contraband, dangerous, explosive and any other commodities which are prohibited by the Railway or banned by the Civil Authorities from time to time shall in no case be allowed to be loaded in the leased parcel space."

Similarly, Clause 9.14 provides as under :

> "9.14. In case of false declaration of any commodity, the lease holder and owner of the goods shall be punishable under Section 163 of Indian Railways Act, 1989."

It is further submitted that in the present case, the applicant knew this fact that transportation of liquor through Railway is prohibited. In spite of that, without making any declaration with regard to the contents of boxes, imported liquor was booked for transportation from

Hazrat Nizamuddin Railway Station to Habibganj Railway Station, Bhopal. Even the address of the recipient of the boxes was not mentioned on the boxes, and merely "Bhopal" was mentioned. Thus, it is clear that the applicant was knowing this fact that the cartons contain the prohibited material, which cannot be transported through Railway and, therefore, with deliberate intention, no declaration was made, and even address of the recipient of consignment was also not mentioned and accordingly, only the destination ''Bhopal" was mentioned. It is further submitted that the alcohol is highly inflammable liquid and in case of fire, it could have caused huge damage to life, passengers and property of the Railway. Under these circumstances, it is submitted that where the right from filing an application seeking permit to import the liquor till delivery of the said imported liquor is contrary to law, therefore, it indicates that the racket is operating, contrary to the law of land and accordingly, the applicant may not be granted anticipatory bail. Thus, it is submitted that the applicant was also the member of conspiracy and it is incorrect to say that he was not aware of the illegal trade of liquor. It is submitted that whether the applicant was aware of illegal trade of liquor or not, is a disputed question of fact, as the same is dependent on the state of mind of an accused. It is further submitted that whether there was any mensrea on the part of the applicant or not, is also a disputed question of fact, therefore, the same cannot be decided, in the present proceedings under Section 482 of Cr.P.C., at such an early stage. It is further submitted that the charge sheet has

been filed, but the applicant is still absconding, inspite of the fact that his application for grant of anticipatory bail has already been rejected by this Court. Accordingly, it is submitted that the application filed under Section 482 of Cr.P.C., deserves to be dismissed.

Heard, the learned Counsel for the parties.

The core of the arguments advanced by the Counsel for the applicant is that he was not aware of the contents of the boxes and was not a part of conspiracy and had no *mens rea*.

The conspiracy is an agreement between two or more persons to do an illegal act or an act which is not illegal but by illegal means. Conspiracy is hatched in secrecy, therefore, in order to prove conspiracy, the object behind the charges levelled, and the facts of the case are important. A person may adopt various means to achieve ultimate goal of conspiracy. But, as the conspiracy is hatched in secrecy and different acts done with the sole aim of conspiracy, therefore, the agreement may be proved by necessary implication. It is not necessary for the prosecution to prove that each and every conspirator should not know all the details of conspiracy. Conspiracy is a continuous offence. Thus, the conspiracy may be general one with separate subsidiary conspiracies. In order to find out that whether conspiracy was hatched or not, the Court is required to view the entire allegations/agreement and to find out as to, what the conspirators intended to do.

The Supreme Court in the case of **Yakub Abdul Razak Memon Vs. State of Maharashtra** reported in **(2013) 13 SCC 1** has held as under :

"128. Prior to the amendment of IPC and the introduction of Sections 120-A and 120-B, the doctrine of agency was applicable to ascertain the liability of the conspirators, however, conspiracy in itself was not an offence (except for certain offences). The amendment made conspiracy a substantive offence and rendered the mere agreement to commit an offence punishable. Prior to the amendment, unless an overt act took place in furtherance of the conspiracy it was not indictable (it would become indictable by virtue of being abetment).

129. The proposition that the mere agreement constitutes the offence has been accepted by this Court in several judgments. Reference may be made to *Major E.G. Barsay* v. *State of Bombay [AIR 1961 SC 1672]* wherein this Court held that the gist of the offence is an agreement to break the law. The parties to such an agreement will be guilty of criminal conspiracy, though the illegal act agreed to be done has not been done. It is not an ingredient of the offence that all the parties should agree to do a single illegal act. It may comprise the commission of a number of acts. The Court in *Barsay case* has held as under: (AIR p. 1778, para 31)

"*31*. … Section 120-A of the Penal Code, 1860 defines 'criminal conspiracy' and under that definition,

'When two or more persons agree to do, or cause to be done, an illegal act, or an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy'.

The gist of the offence is an agreement to break the law. The parties to such an agreement will be guilty of criminal conspiracy, though the illegal act agreed to be done has not been done. So too, it is not an ingredient of the offence that all the parties should agree to do a single illegal act. It may comprise the commission of a

number of acts. Under Section 43 of the Penal Code, 1860 an act would be illegal if it is an offence or if it is prohibited by law. Under the first charge the accused are charged with having conspired to do three categories of illegal acts, and the mere fact that all of them could not be convicted separately in respect of each of the offences has no relevancy in considering the question whether the offence of conspiracy has been committed. They are all guilty of the offence of conspiracy to do illegal acts, though for individual offences all of them may not be liable."

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130. An important facet of the law of conspiracy is that apart from it being a distinct offence, all conspirators are liable for the acts of each other of the crime or crimes which have been committed as a result of the conspiracy. This principle has been recognised right from the early judgment in *R.* v. *Murphy [(1873) 8 Car & P 297]*. In the said judgment Coleridge, J. while summing up for the jury stated as follows: (ER p. 508)

"… I am bound to tell you, that although the common design is the root of the charge, it is not necessary to prove that these two parties came together and actually agreed in terms to have this common design, and to pursue it by common means, and so to carry it into execution. This is not necessary, because in many cases of the most clearly established conspiracies there are no means of proving any such thing and neither law nor common sense requires that it should be proved. If you find that these two persons pursued by their acts the same object, often by the same means, one performing one part of an act, and the other another part of the same act, so as to complete it, with a view to the attainment of the object which they were pursuing, you will be at liberty to

> draw the conclusion that they have been engaged in a conspiracy to effect that object. The question you have to ask yourselves is, 'Had they this common design, and did they pursue it by these common means—the design being unlawful?' … It is not necessary that it should be proved that these defendants met to concoct this scheme, nor is it necessary that they should have originated it. If a conspiracy be already formed, and a person joins it afterwards, he is equally guilty. You are to say whether, from the acts that have been proved, you are satisfied that these defendants were acting in concert in this matter. If you are satisfied that there was concert between them, I am bound to say, that being convinced of the conspiracy, it is not necessary that you should find both Mr Murphy and Mr Douglas doing each particular act, as, after the fact of a conspiracy is once established in your minds, whatever is either said or done by either of the defendants in pursuance of the common design, is, both in law and in common sense, to be considered as the act of both."

The Privy Council in the case of **Babul Choukhani Vs. King Emperor** reported in **AIR 1938 PC 130** has held as under :

> "… if several persons conspire to commit offences, and commit overt acts in pursuance of the conspiracy (a circumstance which makes the act of one the act of each and all the conspirators), these acts are committed in the course of the same transaction, which embraces the conspiracy and the acts done under it."

The Supreme Court in the case of **State of H.P. v. Krishan Lal Pardhan** reported in **(1987) 2 SCC 17** has held as under :

> "*8*. … The offence of criminal conspiracy

> consists in a meeting of minds of two or more persons for agreeing to do or causing to be done an illegal act or an act by illegal means, and the performance of an act in terms thereof. If pursuant to the criminal conspiracy the conspirators commit several offences, then all of them will be liable for the offences even if some of them had not actively participated in the commission of the offences."

The Supreme Court in the case of **State Vs. Nalini** reported in **(1999) 5 SCC 253** has held as under :

> **"583.** Some of the broad principles governing the law of conspiracy may be summarized though, as the name implies, a summary cannot be exhaustive of the principles.
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> *1*. Under Section 120-A IPC offence of criminal conspiracy is committed when two or more persons agree to do or cause to be done an illegal act or legal act by illegal means. When it is a legal act by illegal means overt act is necessary. Offence of criminal conspiracy is an exception to the general law where intent alone does not constitute crime. It is intention to commit crime and joining hands with persons having the same intention. Not only the intention but there has to be agreement to carry out the object of the intention, which is an offence. The question for consideration in a case is did all the accused have the intention and did they agree that the crime be committed. It would not be enough for the offence of conspiracy when some of the accused merely entertained a wish, howsoever horrendous it may be, that offence be committed.
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> *2*. Acts subsequent to the achieving of the object of conspiracy may tend to prove that a particular accused was party to the conspiracy. Once the object of conspiracy has been achieved, any subsequent act, which may be unlawful, would not make

the accused a part of the conspiracy like giving shelter to an absconder.

3. Conspiracy is hatched in private or in secrecy. It is rarely possible to establish a conspiracy by direct evidence. Usually, both the existence of the conspiracy and its objects have to be inferred from the circumstances and the conduct of the accused.

4. Conspirators may for example, be enrolled in a chain – *A* enrolling *B*, *B* enrolling *C*, and so on; and all will be members of a single conspiracy if they so intend and agree, even though each member knows only the person who enrolled him and the person whom he enrols. There may be a kind of umbrella-spoke enrolment, where a single person at the centre does the enrolling and all the other members are unknown to each other, though they know that there are to be other members. These are theories and in practice it may be difficult to tell which conspiracy in a particular case falls into which category. It may however, even overlap. But then there has to be present mutual interest. Persons may be members of single conspiracy even though each is ignorant of the identity of many others who may have diverse roles to play. It is not a part of the crime of conspiracy that all the conspirators need to agree to play the same or an active role.

5. When two or more persons agree to commit a crime of conspiracy, then regardless of making or considering any plans for its commission, and despite the fact that no step is taken by any such person to carry out their common purpose, a crime is committed by each and every one who joins in the agreement. There has thus to be two conspirators and there may be more than that. To prove the charge of conspiracy it is not necessary that intended crime was committed or not. If committed it may further help prosecution to prove the charge of conspiracy.

6. It is not necessary that all conspirators should agree to the common purpose at the same time. They may join with other conspirators at any time before the consummation of the intended objective, and all are equally responsible. What part each conspirator is to play may not be known to everyone or the fact as to when a conspirator joined the conspiracy and when he left.

7. A charge of conspiracy may prejudice the accused because it forces them into a joint trial and the court may consider the entire mass of evidence against every accused. Prosecution has to produce evidence not only to show that each of the accused has knowledge of the object of conspiracy but also of the agreement. In the charge of conspiracy the court has to guard itself against the danger of unfairness to the accused. Introduction of evidence against some may result in the conviction of all, which is to be avoided. By means of evidence in conspiracy, which is otherwise inadmissible in the trial of any other substantive offence prosecution tries to implicate the accused not only in the conspiracy itself but also in the substantive crime of the alleged conspirators. There is always difficulty in tracing the precise contribution of each member of the conspiracy but then there has to be cogent and convincing evidence against each one of the accused charged with the offence of conspiracy. As observed by Judge Learned Hand "this distinction is important today when many prosecutors seek to sweep within the dragnet of conspiracy all those who have been associated in any degree whatever with the main offenders".

8. As stated above it is the unlawful agreement and not its accomplishment, which is the gist or essence of the crime of conspiracy. Offence of criminal conspiracy is complete even though there is no agreement as to the means by which the purpose is to be accomplished. It is the

unlawful agreement which is the gravamen of the crime of conspiracy. The unlawful agreement which amounts to a conspiracy need not be formal or express, but may be inherent in and inferred from the circumstances, especially declarations, acts and conduct of the conspirators. The agreement need not be entered into by all the parties to it at the same time, but may be reached by successive actions evidencing their joining of the conspiracy.

9. It has been said that a criminal conspiracy is a partnership in crime, and that there is in each conspiracy a joint or mutual agency for the prosecution of a common plan. Thus, if two or more persons enter into a conspiracy, any act done by any of them pursuant to the agreement is, in contemplation of law, the act of each of them and they are jointly responsible therefor. This means that everything said, written or done by any of the conspirators in execution or furtherance of the common purpose is deemed to have been said, done or written by each of them. And this joint responsibility extends not only to what is done by any of the conspirators pursuant to the original agreement but also to collateral acts incidental to and growing out of the original purpose. A conspirator is not responsible, however, for acts done by a co-conspirator after termination of the conspiracy. The joinder of a conspiracy by a new member does not create a new conspiracy nor does it change the status of the other conspirators, and the mere fact that conspirators individually or in groups perform different tasks to a common end does not split up a conspiracy into several different conspiracies.

10. A man may join a conspiracy by word or by deed. However, criminal responsibility for a conspiracy requires more than a merely passive attitude towards an existing conspiracy. One who commits an overt act with knowledge of

> the conspiracy is guilty. And one who tacitly consents to the object of a conspiracy and goes along with other conspirators, actually standing by while the others put the conspiracy into effect, is guilty though he intends to take no active part in the crime."

The Supreme Court, in the case of **Pratapbhai Hamirbhai Solanki Vs. State of Gujarat**, repoted in **(2013) 1 SCC 613,** has held as under :

> **"21.** At this stage, it is useful to recapitulate the view this Court has expressed pertaining to criminal conspiracy. In *Damodar* v. *State of Rajasthan [(2004) 12 SCC 336]*, a two-Judge Bench after referring to the decision in *Kehar Singh* v. *State (Delhi Admn.) [(1988) 3 SCC 609]* and *State of Maharashtra* v. *Som Nath Thapa [(1996) 4 SCC 659]*, has stated thus: (*Damodar case*, SCC p. 344, para 15)
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> "*15.* … The most important ingredient of the offence being the agreement between two or more persons to do an illegal act. In a case where criminal conspiracy is alleged, the court must inquire whether the two persons are independently pursuing the same end or they have come together to pursue the unlawful object. The former does not render them conspirators but the latter does. For the offence of conspiracy some kind of physical manifestation of agreement is required to be established. The express agreement need not be proved. The evidence as to the transmission of thoughts sharing the unlawful act is not (*sic*[*]) sufficient. A conspiracy is a continuing offence which continues to subsist till it is executed or rescinded or frustrated by choice of necessity. During its subsistence whenever any one of the conspirators does an act or a series of acts, he would be held guilty under Section 120-B of the Penal Code,

1860."

22. In *Ram Narayan Popli* v. *CBI [(2003) 3 SCC 641]* while dealing with the conspiracy the majority opinion laid down that: (SCC p. 778, para 342)

"*342.* … The elements of a criminal conspiracy have been stated to be: (*a*) an object to be accomplished, (*b*) a plan or scheme embodying means to accomplish that object, (*c*) an agreement or understanding between two or more of the accused persons whereby, they become definitely committed to cooperate for the accomplishment of the object by the means embodied in the agreement, or by any effectual means, and (*d*) in the jurisdiction where the statute required an overt act."

It has been further opined that: (*Ram Narayan Popli case [(2003) 3 SCC 641]*, SCC p. 778, para 342)

"*342.* … The essence of a criminal conspiracy is the unlawful combination and ordinarily the offence is complete when the combination is framed. … no overt act need be done in furtherance of the conspiracy, and that the object of the combination need not be accomplished, in order to constitute an indictable offence. Law making conspiracy a crime is designed to curb immoderate power to do mischief which is gained by a combination of the means. The encouragement and support which co-conspirators give to one another rendering enterprises possible which, if left to individual effort, would have been impossible, furnish the ground for visiting conspirators and abettors with condign punishment. The conspiracy is held to be continued and renewed as to all its members wherever and whenever any member of the conspiracy acts in furtherance of the common design."

The two-Judge Bench proceeded to state that: (*Ram Narayan Popli case [(2003) 3 SCC 641]*, SCC p. 778, para 342)

> "*342.* … For an offence punishable under Section 120-B, the prosecution need not necessarily prove that the perpetrators expressly agree to do or cause to be done illegal act; the agreement may be proved by necessary implication. Offence of criminal conspiracy has its foundation in an agreement to commit an offence. A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more to do an unlawful act by unlawful means."
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> 23. In the said case it has been highlighted that in the case of conspiracy there cannot be any direct evidence. The ingredients of offence are that there should be an agreement between persons who are alleged to conspire and the said agreement should be for doing an illegal act or for doing by illegal means an act which itself may not be illegal. Therefore, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both, and it is a matter of common experience that direct evidence to prove conspiracy is rarely available. Therefore, the circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused."

The Supreme Court in the case of **CBI Vs. K. Narayana Rao** reported in **(2012) 9 SCC 512** has held as under :

> "24. The ingredients of the offence of criminal conspiracy are that there should be an agreement between the persons who are alleged to conspire and the said agreement should be for doing of an illegal act or for doing, by illegal means, an act which by itself may not be illegal. In other words, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either

> by direct evidence or by circumstantial evidence or by both and in a matter of common experience that direct evidence to prove conspiracy is rarely available. Accordingly, the circumstances proved before and after the occurrence have to be considered to decide about the complicity of the accused. Even if some acts are proved to have been committed, it must be clear that they were so committed in pursuance of an agreement made between the accused persons who were parties to the alleged conspiracy. Inferences from such proved circumstances regarding the guilt may be drawn only when such circumstances are incapable of any other reasonable explanation. In other words, an offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inference which are not supported by cogent and acceptable evidence."

The Supreme Court in the case of **Mukesh vs. State (NCT of Delhi)** reported in **(2017) 6 SCC 1** has held as under:-

> "**288.** The rationale of conspiracy is that the required objective manifestation of disposition of criminality is provided by the act of agreement. Conspiracy is a clandestine activity. Persons generally do not form illegal covenants openly. In the interest of security, a person may carry out his part of a conspiracy without even being informed of the identity of his co-conspirators. An agreement of this kind can rarely be shown by direct proof; it must be inferred from the circumstantial evidence of co-operation between the accused. What people do is, of course, evidence of what lies in their minds. To convict a person of conspiracy, the prosecution must show that he agreed with others that they would together accomplish the unlawful object of the conspiracy. [See: Firozuddin Basheeruddin

and others v. State of Kerala reported in (2001) 7 SCC 596.]

289. In Suresh Chandra Bahri v. State of Bihar reported in 1995 SCC (Cri) 60, this Court reiterated that the essential ingredient of criminal conspiracy is the agreement to commit an offence. After referring to the judgments in Noor Mohd. Mohd. Yusuf Momin reported in (1970) 1 SCC 696 and V.C. Shukla v. State (Delhi Admn.) reported in (1980) 2 SCC 665, it was held in S.C. Bahri (supra) as under:

> "[A] cursory look to the provisions contained in Section 120-A reveals that a criminal conspiracy envisages an agreement between two or more persons to commit an illegal act or an act which by itself may not be illegal but the same is done or executed by illegal means. Thus the essential ingredient of the offence of criminal conspiracy is the agreement to commit an offence. In a case where the agreement is for accomplishment of an act which by itself constitutes an offence, then in that event no overt act is necessary to be proved by the prosecution because in such a fact-situation criminal conspiracy is established by proving such an agreement. In other words, where the conspiracy alleged is with regard to commission of a serious crime of the nature as contemplated in Section 120-B read with the proviso to sub-section (2) of Section 120-A IPC, then in that event mere proof of an agreement between the accused for commission of such a crime alone is enough to bring about a conviction under Section 120-B and the proof of any overt act by the accused or by any one of them would not be necessary. The provisions in such a situation do not require that each and every person who is a party to the conspiracy must do some overt act towards the fulfilment of the object of conspiracy, the essential ingredient

> being an agreement between the conspirators to commit the crime and if these requirements and ingredients are established the act would fall within the trapping of the provisions contained in Section 120-B since from its very nature a conspiracy must be conceived and hatched in complete secrecy, because otherwise the whole purpose may be frustrated and it is common experience and goes without saying that only in very rare cases one may come across direct evidence of a criminal conspiracy to commit any crime and in most of the cases it is only the circumstantial evidence which is available from which an inference giving rise to the conclusion of an agreement between two or more persons to commit an offence may be legitimately drawn."
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> **290.** From the law discussed above, it becomes clear that the prosecution must adduce evidence to prove that:
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> (i) the accused agreed to do or caused to be done an act;
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> (ii) such an act was illegal or was to be done by illegal means within the meaning of IPC;
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> (iii)irrespective of whether some overt act was done by one of the accused in pursuance of the agreement."

Thus, it is clear that whether a person was a part of the conspiracy or not, is certainly a highly disputed question of fact, which has to be decided only after considering the entire evidence which would come on record.

If the facts and circumstances of this case are considered in the light of the judgment pronounced by the Supreme Court, then it is clear that although M/s Saksham Beverages Pvt. Limited, Gurugram was not holding license to export liquor out of State of Haryana, but, inspite of

that Sayaji Hotel, filed an application before the Excise Department, seeking permission to import liquor from M/s Saksham Beverages Pvt. Limited, Gurugram and the permission was granted, which also does not appear to be correct. Even otherwise, the brand and the quantity of liquor which was sold by M/s Saksham Beverages Pvt. Limited was not in accordance with the brand and quantity of liquor, for which the permission was granted. Further in the builty, neither the number of the truck nor the name of the driver, route etc were mentioned and inspite of the fact that the liquor is a prohibited article and cannot be transported through Railway, M/s Sakhi Rail Parcel Services booked the consignment for transportation of 22 boxes of liquor through Railway from H. Nizamuddin to Bhopal. No declaration was made on the boxes with regard to its contents, and even the name of the recipient of the boxes was also not mentioned on the boxes. Although the liquor was to be supplied to Sayaji Hotel, Indore, but the consignment was booked from Hazrat Nizamuddin to Bhopal and undisputedly, Indore is approximately 250 Kms away from Bhopal. Direct trains from H. Nizamuddin/New Delhi Railway Station are available for Indore, but the consignment was booked for Bhopal. The liquor was not sent by road, with a ulterior motive of avoiding checking at Toll Tax Nakas.

Thus, if the entire allegations are taken on their face value, then it is clear that apparently, the applicant is also involved in illegal transportation of liquor, inspite of the agreement between M/s Sakhi Rail Parcel Service and the Railway.

It is next contended by the Counsel for the applicant that even if the entire allegations are accepted, it would be clear that no offence under Section 34 of M.P. Excise Act would be made out and at the most, the applicant may be guilty of committing offence under Section 163 of Railways Act. It is further submitted that when an agreement, specifically provides for an offence, then the applicant cannot be prosecuted for any other offence, except the offence under Section 163 of Railways Act.

The Submission made by the Counsel for the applicant is misconceived and is hereby rejected.

There is nothing in the agreement executed between the Railway and M/s Sakhi Rail Parcel Services Limited, which ousts the application of Indian Penal Code or any other law. Even otherwise, if the agreement is interpreted in a manner as suggested by the Counsel for the applicant, then it would become vulnerable to attack as it might fall within the category of void contract.

Section 28 of Contract Act reads as under :

> **"28. Agreements in restraint of legal proceedings void**.— Every agreement,—
>
> (*a*) by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, or
>
> (*b*) which extinguishes the rights of any party thereto, or discharges any party thereto from any liability, under or in respect of any contract on the expiry of a specified period so as to restrict any party from enforcing his rights, is void to that extent.]
>
> *Exception* 1.—**Saving of contract to refer to arbitration dispute that may arise.—**

This section shall not render illegal a contract, by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred.

Suits barred by such contracts.— *When such a contract has been made, a suit may be brought for its specific performance; and if a suit, other than for such specific performance, or for the recovery of the amount so awarded, is brought by one party to such contract against any other such party, in respect of any subject which they have so agreed to refer, the existence of such contract shall be a bar to the suit*.

Exception 2.**—Saving of contract to refer questions that have already arisen.—** Nor shall this section render illegal any contract in writing, by which two or more persons agree to refer to arbitration any question between them which has already arisen, or affect any provision of any law in force for the time being as to references to arbitration.[3]

[*Exception* 3.**—Saving of a guarantee agreement of a bank or a financial institution.—**This section shall not render illegal a contract in writing by which any bank or financial institution stipulate a term in a guarantee or any agreement making a provision for guarantee for extinguishment of the rights or discharge of any party thereto from any liability under or in respect of such guarantee or agreement on the expiry of a specified period which is not less than one year from the date of occurring or non-occurring of a specified event for extinguishment or discharge of such party from the said liability.

Explanation.—(*i*) In Exception 3, the expression "bank" means—

(*a*) a "banking company" as defined in

> clause (*c*) of Section 5 of the Banking Regulation Act, 1949 (10 of 1949);
>
> (*b*) "a corresponding new bank" as defined in clause (*da*) of Section 5 of the Banking Regulation Act, 1949 (10 of 1949);
>
> (*c*) "State Bank of India" constituted under Section 3 of the State Bank of India Act, 1955 (23 of 1955);
>
> (*d*) "a subsidiary bank" as defined in clause (*k*) of Section 2 of the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959)
>
> (*e*) "a Regional Rural Bank" established under Section 3 of the Regional Rural Bank Act, 1976 (21 of 1976);
>
> (*f*) "a Co-operative Bank" as defined in clause (*cci*) of Section 5 of the Banking Regulation Act, 1949 (10 of 1949);
>
> (*g*) "a multi-State co-operative bank" as defined in clause (*cciiia*) of Section 5 of the Banking Regulation Act, 1949 (10 of 1949); and
>
> (*ii*) In Exception 3, the expression "a financial institution" means any public financial institution within the meaning of Section 4-A of the Companies Act, 1956 (1 of 1956).]"

In absence of any specific ouster of provisions of Penal Code or any other Statute, it cannot inferred that the provisions of any other penal statute would not apply.

The Supreme Court in the case of **State of M.P. Vs. Rameshwar** reported in **(2009) 11 SCC 424** has held as under :

> "48. Mr Tankha's submissions, which were echoed by Mr Jain, that the M.P. Cooperative Societies Act, 1960 was a complete code in itself and the remedy of the prosecuting agency lay not under the criminal process but within the ambit of Sections 74 to 76 thereof, cannot also be accepted in view of the fact that there is no bar under the M.P. Cooperative Societies Act, 1960, to take resort to the

> provisions of the general criminal law, particularly when charges under the Prevention of Corruption Act, 1988, are involved."

It is next contended by the Counsel for the applicant that even otherwise, if the entire allegations are accepted, then no offence under Section 34 of M.P. Excise Act would be made out. It is submitted that in fact the applicant was not transporting the liquor, but as the Railway was transporting the liquor, therefore, the Railway Ministry should have been made an accused and not the applicant.

The submission made by the Counsel for the applicant is misconceived and is hereby rejected.

Section 34 of M.P. Excise Act, reads as under:

> "34. **Penalty for unlawful manufacture, transport, possession, sale etc.**- (1) Whoever, in contravention of any provisions of this Act, or of any rule, notification or order make or issued thereunder, or of any condition of a licence permit or pass granted under this Act,-
>
> (a) manufactures, transports, imports, exports, collects or possesses any intoxicant;
>
> (b) save in the cases provided for in Section 38, sells any intoxicant; or
>
> (c) cultivates bhang; or
>
> (d) taps any toddy producing tree/or draws toddy therefrom; or
>
> (e) constructs, or works any distillery, brewery or wintnery; or
>
> (f) uses, keeps or has in his possession any material, still utensil, implement, or apparatus, whatsoever for the purpose of manufacturing any intoxicant other than toddy; or
>
> (g) removes any intoxicant from any distillery, brewery, wintnery or warehouse licensed, established or contained under this Act,

(h) bottles any liquor;

shall subject to the provisions of sub-section (2), be punishable for every such offence with imprisonment for a term which not extend to one year and fine which shall not be less than five hundred rupees but which may extend to five thousand rupees:

Provided that when any person is convicted under this Section of any offence for a second or subsequent time he shall be punishable for every such offence with imprisonment for a term which shall not be less than two months but which may extend to twenty four months and with fine which shall not be less than two thousand rupees but which may extend to ten thousand rupees.

(2) Notwithstanding anything contained in sub-section (1), if a person is convicted for an offence covered by clause (a) or clause (b) of sub-section (1) and the quantity of the intoxicant being liquor found at the time or in the course of detection of the offence exceeds fifty bulk litre, he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than twenty five thousand rupees but may extend to one lac rupees:

Provided that when any person is convicted under this Section for an offence for second or subsequent time, he shall be punishable for every such offence with imprisonment for a term which shall not be less than two years but which may extend to five years and with fine which shall not be less than fitly thousand rupees but may extend to two lac rupees.

(3) When an offence covered by clause (a) or clause (b) of sub-section (1) is committed and the quantity of liquor found at the lime or in the course of detection of such offence exceeds fifty bulk litres, all intoxicants, articles, implements,

> utensils, materials conveyance etc. in respect of or by means of which the offence is committed, shall be liable to be seized and confiscated. If such an offence is committed by or on behalf of a person who holds a licence under the Act for manufacturing or stocking or storing liquor for sale on which duty at the prescribed rate has not been paid then notwithstanding anything contained in Section 31 the licence granted to him shall be cancelled in case he is convicted for the offence as aforesaid.
>
> (4) The seizure or confiscation of the intoxicants, articles implements, utensils, materials and conveyance and the cancellation of licence as provided under sub-section (2) above shall be in addition and without prejudice to any other action that may be taken under any provisions of the Act or Rules made thereunder."

Undisputedly, an agreement has been executed between the Railway and M/s Sakhi Rail Parcel Limited, and the Railway has leased out Parcel space to M/s Sakhi Rail Parcel Limited, subject to certain terms and conditions including that the prohibited articles shall not be transported through Railway. In the present case, the consignment was loaded in the leased Parcel space of the train by the applicant. It is the M/s Sakhi Rail Parcel Service who had put the consignment in transit. The Railway did not book the consignment but it was M/s Sakhi Rail Parcel Service, who had booked the consignment. Further, no declaration was made by the applicant with regard to the contents of the boxes. Thus, the word "transports" cannot be interpreted to implicate the Railway by exonerating the applicant. It is the applicant/M/s Sakhi Rail Parcel Service, which had put the

liquor in transit contrary to law as well as contrary to agreement, therefore, *prima facie*, an offence under Section 34 of M.P. Excise Act, would be made out.

While exercising powers under Section 482 of Cr.P.C., this Court cannot consider the disputed questions of fact and even otherwise, it is a well established principle of law that the legitimate prosecution should not be stifled at the very early stage.

The Supreme Court in the case of **Satvinder Kaur Vs. State (Govt. Of NCT of Delhi)** reported in **(1999) 8 SCC 728**, has held as under :

> "**14.** Further, the legal position is well settled that if an offence is disclosed the court will not normally interfere with an investigation into the case and will permit investigation into the offence alleged to be completed. If the FIR, prima facie, discloses the commission of an offence, the court does not normally stop the investigation, for, to do so would be to trench upon the lawful power of the police to investigate into cognizable offences. It is also settled by a long course of decisions of this Court that for the purpose of exercising its power under Section 482 CrPC to quash an FIR or a complaint, the High Court would have to proceed entirely on the basis of the allegations made in the complaint or the documents accompanying the same per se; it has no jurisdiction to examine the correctness or otherwise of the allegations.
>
> **15.** Hence, in the present case, the High Court committed a grave error in accepting the contention of the respondent that the investigating officer had no jurisdiction to investigate the matters on the alleged ground that no part of the offence was committed within the territorial jurisdiction of the police station at Delhi. The appreciation of the evidence is the function

of the courts when seized of the matter. At the stage of investigation, the material collected by an investigating officer cannot be judicially scrutinized for arriving at a conclusion that the police station officer of a particular police station would not have territorial jurisdiction. In any case, it has to be stated that in view of Section 178(*c*) of the Criminal Procedure Code, when it is uncertain in which of the several local areas an offence was committed, or where it consists of several acts done in different local areas, the said offence can be enquired into or tried by a court having jurisdiction over any of such local areas. Therefore, to say at the stage of investigation that the SHO, Police Station Paschim Vihar, New Delhi was not having territorial jurisdiction, is on the face of it, illegal and erroneous. That apart, Section 156(2) contains an embargo that no proceeding of a police officer shall be challenged on the ground that he has no territorial power to investigate. The High Court has completely overlooked the said embargo when it entertained the petition of Respondent 2 on the ground of want of territorial jurisdiction.

16. Lastly, it is required to be reiterated that while exercising the jurisdiction under Section 482 of the Criminal Procedure Code of quashing an investigation, the court should bear in mind what has been observed in the *State of Kerala* v. *O.C. Kuttan reported in (1999) 2 SCC 651* to the following effect: (SCC pp. 654-55, para 6)

> "Having said so, the Court gave a note of caution to the effect that the power of quashing the criminal proceedings should be exercised very sparingly 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 FIR 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. It is too well settled that the first information report is only an initiation to move the machinery and to investigate into a cognizable offence and, therefore, while exercising the power and deciding whether the investigation itself should be quashed, utmost care should be taken by the court and at that stage, it is not possible for the court to sift the materials or to weigh the materials and then come to the conclusion one way or the other. In the case of *State of U.P.* v. *O.P. Sharma reported in (1996) 7 SCC 705* a three-Judge Bench of this Court indicated that the High Court should be loath to interfere at the threshold to thwart the prosecution exercising its inherent power under Section 482 or under Articles 226 and 227 of the Constitution of India, as the case may be, and allow the law to take its own course. The same view was reiterated by yet another three-Judge Bench of this Court in the case of *Rashmi Kumar* v. *Mahesh Kumar Bhada reported in (1997) 2 SCC 397* where this Court sounded a word of caution and stated that such power should be sparingly and cautiously exercised only when the court is of the opinion that otherwise there will be gross miscarriage of justice. The Court had also observed that social stability and order is required to be regulated by proceeding against the offender as it is an offence against society as a whole.""

The Supreme Court in the case of **Padal Venkata Rama Reddy Vs. Koveuri Satyanarayana Reddy** reported in **(2011) 12 SCC 437** has held as under:

"8. Section 482 of the Code deals with inherent power of the High Court. It is under Chapter 37 of the Code titled "Miscellaneous" which reads as under:

"**482.** *Saving of inherent powers of High Court*.—Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice."

This section* was added by the Code of Criminal Procedure (Amendment) Act of 1923 as the High Courts were unable to render complete justice even if in a given case the illegality was palpable and apparent. This section envisages three circumstances in which the inherent jurisdiction may be exercised, namely:

1. to give effect to any order under CrPC,

2. to prevent abuse of the process of any court,

3. to secure the ends of justice.

9. In *R.P. Kapur* v. *State of Punjab AIR 1960 SC 866* this Court laid down the following principles:

(*i*) Where institution/continuance of criminal proceedings against an accused may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice;

(*ii*) where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding e.g. want of sanction;

(*iii*) where the allegations in the first information report or the complaint taken at their face value and accepted in their entirety, do not constitute the offence alleged; and

(*iv*) where the allegations constitute an offence alleged but there is either no

legal evidence adduced or evidence adduced clearly or manifestly fails to prove the charge.

10. In *State of Karnataka* v. *L. Muniswamy (1977) 2 SCC 699* this Court has held as under: (SCC p. 703, para 7)

"*7*. … In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction."

11. Though the High Court has inherent power and its scope is very wide, it is a rule of practice that it will only be exercised in exceptional cases. Section 482 is a sort of reminder to the High Courts that they are not merely courts of law, but also courts of justice and possess inherent powers to remove injustice. The inherent power of the High

Court is an inalienable attribute of the position it holds with respect to the courts subordinate to it. These powers are partly administrative and partly judicial. They are necessarily judicial when they are exercisable with respect to a judicial order and for securing the ends of justice. The jurisdiction under Section 482 is discretionary, therefore the High Court may refuse to exercise the discretion if a party has not approached it with clean hands.

12. In a proceeding under Section 482, the High Court will not enter into any finding of facts, particularly, when the matter has been concluded by concurrent finding of facts of the two courts below. Inherent powers under Section 482 include powers to quash FIR, investigation or any criminal proceedings pending before the High Court or any court subordinate to it and are of wide magnitude and ramification. Such powers can be exercised to secure ends of justice, prevent abuse of the process of any court and to make such orders as may be necessary to give effect to any order under this Code, depending upon the facts of a given case. The Court can always take note of any miscarriage of justice and prevent the same by exercising its powers under Section 482 of the Code. These powers are neither limited nor curtailed by any other provisions of the Code. However, such inherent powers are to be exercised sparingly, carefully and with caution.

13. It is well settled that the inherent powers under Section 482 can be exercised only when no other remedy is available to the litigant and not in a situation where a specific remedy is provided by the statute. It cannot be used if it is inconsistent with specific provisions provided under the Code (vide *Kavita* v. *State 2000 Cri LJ 315*

and *B.S. Joshi* v. *State of Haryana (2003) 4 SCC 675*). If an effective alternative remedy is available, the High Court will not exercise its powers under this section, specially when the applicant may not have availed of that remedy.

14. The inherent power is to be exercised *ex debito justitiae*, to do real and substantial justice, for administration of which alone courts exist. Wherever any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent the abuse. It is, however, not necessary that at this stage there should be a meticulous analysis of the case before the trial to find out whether the case ends in conviction or acquittal. (Vide *Dhanalakshmi* v. *R. Prasanna Kumar 1990 Supp SCC 686*; *Ganesh Narayan Hegde* v. *S. Bangarappa (1995) 4 SCC 41* and *Zandu Pharmaceutical Works Ltd.* v. *Mohd. Sharaful Haque (2005) 1 SCC 122*.)

15. It is neither feasible nor practicable to lay down exhaustively as to on what ground the jurisdiction of the High Court under Section 482 of the Code should be exercised. But some attempts have been made in that behalf in some of the decisions of this Court vide *State of Haryana* v. *Bhajan Lal 1992 Supp (1) SCC 335*, *Janata Dal* v. *H.S. Chowdhary (1992) 4 SCC 305*, *Rupan Deol Bajaj* v. *Kanwar Pal Singh Gill (1995) 6 SCC 194* and *Indian Oil Corpn.* v. *NEPC India Ltd. (2006) 6 SCC 736*.

* * * * * *

18. In *State of Orissa* v. *Saroj Kumar Sahoo (2005) 13 SCC 540* it has been held that probabilities of the prosecution version cannot be analysed at this stage. Likewise, the allegations of mala fides of

the informant are of secondary importance. The relevant passage reads thus: (SCC p. 550, para 11)

"*11*. … It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with."

19. In *Madhavrao Jiwajirao Scindia* v. *Sambhajirao Chandrojirao Angre (1988) 1 SCC 692* this Court held as under: (SCC p. 695, para 7)

"*7*. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage."

20. This Court, while reconsidering the judgment in *Madhavrao Jiwajirao Scindia (1988) 1 SCC 692*, has consistently observed that where matters are also of civil nature i.e. matrimonial, family disputes, etc., the Court may consider

"special facts", "special features" and quash the criminal proceedings to encourage genuine settlement of disputes between the parties.

21. The said judgment in *Madhavrao case (1988) 1 SCC 692* was reconsidered and explained by this Court in *State of Bihar* v. *P.P. Sharma 1992 Supp (1) SCC 222* which reads as under: (SCC p. 271, para 70)

"*70. Madhavrao Jiwajirao Scindia* v. *Sambhajirao Chandrojirao Angre (1988) 1 SCC 692* also does not help the respondents. In that case the allegations constituted civil wrong as the trustees created tenancy of trust property to favour the third party. A private complaint was laid for the offence under Section 467 read with Section 34 and Section 120-B IPC which the High Court refused to quash under Section 482. This Court allowed the appeal and quashed the proceedings on the ground that even on its own contentions in the complaint, it would be a case of breach of trust or a civil wrong but no ingredients of criminal offence were made out. On those facts and also due to the relation of the settler, the mother, the appellant and his wife, as the son and daughter-in-law, this Court interfered and allowed the appeal. … Therefore, the ratio therein is of no assistance to the facts in this case. It cannot be considered that this Court laid down as a proposition of law that in every case the court would examine at the preliminary stage whether there would be ultimate chances of conviction on the basis of allegation and exercise of the power under Section 482 or Article 226 to quash the proceedings or the charge-sheet."

22. Thus, the judgment in *Madhavrao Jiwajirao Scindia (1988) 1 SCC 692* does not lay down a law of universal application. Even as per the law laid down therein, the Court cannot examine

> the facts/evidence, etc. in every case to find out as to whether there is sufficient material on the basis of which the case would end in conviction. The ratio of *Madhavrao Jiwajirao Scindia (1988) 1 SCC 692* is applicable in cases where the Court finds that the dispute involved therein is predominantly civil in nature and that the parties should be given a chance to reach a compromise e.g. matrimonial, property and family disputes, etc. etc. The superior courts have been given inherent powers to prevent the abuse of the process of court; where the Court finds that the ends of justice may be met by quashing the proceedings, it may quash the proceedings, as the end of achieving justice is higher than the end of merely following the law. It is not necessary for the Court to hold a full-fledged inquiry or to appreciate the evidence, collected by the investigating agency to find out whether the case would end in conviction or acquittal".

The Supreme Court in the case of **State of Orissa v. Ujjal Kumar Burdhan** reported in **(2012) 4 SCC 547** has held as under :

> **"8.** It is true that the inherent powers vested in the High Court under Section 482 of the Code are very wide. Nevertheless, inherent powers do not confer arbitrary jurisdiction on the High Court to act according to whims or caprice. This extraordinary power has to be exercised sparingly with circumspection and as far as possible, for extraordinary cases, where allegations in the complaint or the first information report, taken on its face value and accepted in their entirety do not constitute the offence alleged. It needs little emphasis that unless a case of gross abuse of power is made out against those in charge of investigation,

the High Court should be loath to interfere at the early/premature stage of investigation.

9. In *State of W.B.* v. *Swapan Kumar Guha*, emphasising that the Court will not normally interfere with an investigation and will permit the inquiry into the alleged offence, to be completed, this Court highlighted the necessity of a proper investigation observing thus: (SCC pp. 597-98, paras 65-66)

"*65*. … *An investigation is carried on for the purpose of gathering necessary materials for establishing and proving an offence which is disclosed. When an offence is disclosed, a proper investigation in the interests of justice becomes necessary to collect materials for establishing the offence, and for bringing the offender to book. In the absence of a proper investigation in a case where an offence is disclosed, the offender may succeed in escaping from the consequences and the offender may go unpunished to the detriment of the cause of justice and the society at large*. Justice requires that a person who commits an offence has to be brought to book and must be punished for the same. *If the court interferes with the proper investigation in a case where an offence has been disclosed, the offence will go unpunished to the serious detriment of the welfare of the society and the cause of the justice suffers. It is on the basis of this principle that the court normally does not interfere with the investigation of a case where an offence has been disclosed*. …

66. Whether an offence has been disclosed or not must necessarily depend on the facts and circumstances of each particular case. … *If on a consideration of the relevant materials, the court is satisfied that an offence is disclosed, the court will normally not interfere with the*

> *investigation into the offence and will generally allow the investigation into the offence to be completed for collecting materials for proving the offence*."

(emphasis supplied)

> **10.** On a similar issue under consideration, in *Jeffrey J. Diermeier* v. *State of W.B.*, while explaining the scope and ambit of the inherent powers of the High Court under Section 482 of the Code, one of us (D.K. Jain, J.) speaking for the Bench, has observed as follows: (SCC p. 251, para 20)
>
> "*20*. … The section itself envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (*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. Nevertheless, it is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction of the court. Undoubtedly, the power possessed by the High Court under the said provision is very wide but it is not unlimited. It has to be exercised sparingly, carefully and cautiously, ex debito justitiae to do real and substantial justice for which alone the court exists. It needs little emphasis that the inherent jurisdiction does not confer an arbitrary power on the High Court to act according to whim or caprice. The power exists to prevent abuse of authority and not to produce injustice."

The Supreme Court in the case of **Vinod Raghuvanshi Vs. Ajay Arora,** reported in **(2013) 10 SCC 581** has held as under :

> **"30.** It is a settled legal proposition that while considering the case for quashing of the criminal proceedings the court should not "kill a stillborn child", and appropriate prosecution should not be

> stifled unless there are compelling circumstances to do so. An investigation should not be shut out at the threshold if the allegations have some substance. When a prosecution at the initial stage is to be quashed, the test to be applied by the court is whether the uncontroverted allegations as made, prima facie establish the offence. At this stage neither can the court embark upon an inquiry, whether the allegations in the complaint are likely to be established by evidence nor should the court judge the probability, reliability or genuineness of the allegations made therein."

The Supreme Court in the case of **Smt. Nagawwa vs. Veeranna Shivalingappa Konjalgi & Ors.** reported in **AIR 1976 SC 1947** has held as under:-

> "6. …..... The High Court appears to have gone into the whole history of the case, examined the merits of the evidence, the contradictions and what it called the improbabilities and after a detailed discussion not only of the materials produced before the Magistrate but also of the documents which had been filed by the defence and which should not have been looked into at the stage when the matter was pending under Section 202, has held that the order of the Magistrate was illegal and was fit to be quashed.....
>
> 7. For these reasons, therefore, we are satisfied that the order of the High Court suffers from a serious legal infirmity and the High Court has exceeded its jurisdiction in interfering in revision by quashing the order of the Magistrate. We, therefore, allow the appeal, set aside the order of the High Court dated December 16, 1975 and restore the order of the Magistrate issuing process against respondents No.1 and 2."

In the case of **Mosiruddin Munshi Vs. Md. Siraj** reported in **AIR 2014 SC 3352**, the Supreme Court has held as under :

> "**6.** Yet again in *Mahesh Chaudhary* v. *State of Rajasthan (2009) 4 SCC 439* this Court stated the law thus:
>
> "*11*. The principle providing for exercise of the power by a High Court under Section 482 of the Code of Criminal Procedure to quash a criminal proceeding is well known. The Court shall ordinarily exercise the said jurisdiction, inter alia, in the event the allegations contained in the FIR or the complaint petition even if on face value are taken to be correct in their entirety, does not disclose commission of an offence."

The Supreme Court in the case of **Sushil Suri Vs. CBI** reported in **(2011) 5 SCC 708** has held as under :

> "**18.** In *Dinesh Dutt Joshi* v. *State of Rajasthan*—(2001) 8 SCC 570, while explaining the object and purpose of Section 482 CrPC, this Court had observed thus: (SCC p. 573, para 6)
>
> "*6*. … The principle embodied in the section is based upon the maxim: *quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest* i.e. when the law gives anything to anyone, it gives also all those things without which the thing itself would be unavailable. The section does not confer any new power, but only declares that the High Court possesses inherent powers for the purposes specified in the section. As lacunae are sometimes found in procedural law, the section has been embodied to cover such lacunae wherever they are discovered. The use of extraordinary powers conferred upon the High Court under this section are

however required to be reserved, as far as possible, for extraordinary cases."

19. Recently, this Court in *A. Ravishankar Prasad* (2009) 6 SCC 351, relied upon by the learned counsel for CBI, referring to several earlier decisions on the point, including *R.P. Kapur* AIR 1960 SC 866, *State of Haryana* v. *Bhajan* Lal 1992 (Supp) 1 SCC 335, *Janata Dal* v. *H.S. Chowdhary,* (1992) 4 SCC 395 *B.S. Joshi,* (2003) 4 SCC 675 *Nikhil Merchant,* (2008) 9 SCC 677 etc. has reiterated that the exercise of inherent powers would entirely depend on the facts and circumstances of each case.

20. It has been further observed that:

(*A. Ravishankar Prasad case*—(2009) 6 SCC 351

"*23*. … The inherent power should not be exercised to stifle a legitimate prosecution. The High Court should normally refrain from giving a prima facie decision in a case where all the facts are incomplete and hazy, more so, when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of such magnitude that they cannot be seen in their true perspective without sufficient material."

In the case of **State of A.P. Vs. Vengaveeti Nagaiah** reported in **AIR 2009 SC 2646,** it has been held as under :

''4.Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The Section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (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. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the Section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle quando lex alicui aliquot concedere, conceditur videtur id sine quo res ipsa esse non potest (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the Section, the Court does not function as a court of appeal or revision. Inherent jurisdiction under the Section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent such abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation or

continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

5.In R.P. Kapur v. State of Punjab (AIR 1960 SC 866) this Court summarized some categories of cases where inherent power can and should be exercised to quash the proceedings.

(i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

(ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

6.In dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the

function of the trial Judge. Judicial process no doubt should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the Section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in State of Haryana v. Bhajan Lal [1992 (Supp)(1) SCC 335]. A note of caution was, however, added that the power should be exercised sparingly and that too in rarest of rare cases.

The illustrative categories indicated by this Court are as follows:

"(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 FIR 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 F.I.R. 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 non-cognizable 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 FIR 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.

7.As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. High Court being the

highest Court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises, arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only 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 quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint/F.I.R. has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant or disclosed in the F.I.R. that the ingredients of the offence or offences are disclosed and there is no material to show that the

> complaint/F.I.R. is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in Court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by itself be the basis for quashing the proceeding."

In the case of **R. Kalyani Vs. Janak C.Mehta**, reported in **(2009) 1 SCC 516**, it has been held by Supreme Court as under :

> "**15.** Propositions of law which emerge from the said decisions are:
>
> (*1*) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a first information report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.
>
> (*2*) For the said purpose the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.
>
> (*3*) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the Court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus.
>
> (4) If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue."

The Supreme Court in the case of **Tilly Gifford Vs.**

Michael Floyd Eshwar and another reported in **(2018) 11 SCC 205** has held as under :

> "3. A perusal of the order of the High Court released on 21-5-2015 would indicate that the High Court has gone far beyond the contours of its power and jurisdiction under Section 482 of Cr.P.C. to quash a criminal proceeding, the extent of such jurisdiction having been dealt with by this Court in numberous pronouncements over the last half century. Time and again, it has been emphasised by this Court that the power under Section 482 Cr.P.C. Would not permit the High Court to go into disputed questions of fact or to appreciate the defence of the accused. The power to interdict a criminal proceeding at the stage of investigation is even more rare. Broadly speaking, a criminal investigation, unless tainted by clear malafides, should not be foreclosed by a Court of law."

Furthermore, the application filed by the applicant, for grant of anticipatory bail has already been rejected by this Court. The Charge sheet has already been filed and the applicant is still absconding.

Thus, considering the facts and circumstances of the case, this Court is of the considered opinion that the uncontroverted facts *prima facie* indicate towards the involvement of the applicant in the conspiracy.

Hence, the F.I.R. in crime No. 601 of 2017 registered by District Excise Office, Gwalior for offence under Sections 34(1)(a), 34(1)(b) read with Section 34(2) of M.P. Excise Act, cannot be quashed at this stage.

Before parting with the order, this Court finds it appropriate to mention that the allegations made against the applicant, have been considered in the light of limited scope of interference under Section 482 of Cr.P.C. The

Trial Court, is requested to consider the allegations, strictly in accordance with evidence which would come on record, without getting prejudiced by any of the observation made in this order.

Hence, this application fails and is hereby **dismissed.**

(G. S. Ahluwalia)
Judge

AKS