

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE

BEFORE HON. SHRI JUSTICE ALOK VERMA,J

M.Cr.C. No.1238/2014

1 P.V. Muralidharan
S/o Late Shri V.V.S. Nambishan
Aged 55 years, Occ.- General Manager
R/o – Rairu Farm, A.B. Road, Gwalior
(M.P.)

..... Applicant

Vs.

1 State of M.P.
Through Police Station Ujjain (Excise)

..... Respondent

Shri Sameer Kumar Shrivastava, learned counsel for the applicant.

Shri R.S. Parmar, learned P.L. for the respondent/State.

ORDER

(Passed on 03/02/2015)

This application under section 482 of Cr.P.C. is directed against the order passed by the learned 9th Additional Sessions Judge, Ujjain in Criminal Revision No.357/2012 in which the present applicant was the revisionist and whereby the learned Additional Sessions Judge confirmed the order passed by the learned Judicial Magistrate First Class, Ujjain

framing charges against the present applicant under section 34 - 1(A) r/w section 34(2)(A) M.P. Excise Act.

2. The brief facts giving rise to this application are that on 29.05.2011, when Sub-Inspector (Excise) along with his force was petrolling the area, he intercepted goods vehicle bearing registration No.MP06-HC-0861 and MP06-HC-1157 on suspicion. The vehicles were loaded with liquor. They produced permit for the liquor. The vehicles were carrying 500 and 1000 cartons of liquor respectively. The sub-inspector checked 10 cartons from each vehicle and found that in many of such boxes, the required holograms were not affixed and, therefore, he proceeded to take action against the present applicant and other co-accused.

3. While dealing with the matter, the question raised before the learned Additional Sessions Judge was whether the present applicant was liable for affixing holograms on the cartons. The learned Additional Sessions Judge as well as the Magistrate were of the view that at the stage of framing of charge, it could not be decided whether the accused were under liability of affixing the hologram on the cartons containing the liquor.

4. Before the proceeding to decide the controversy involved in the matter, it may be observed that Commissioner Excise issued an instruction which is filed as (Annexure P/4) at page 16 with the application directing therein that earlier instructions were issued for affixing of hologram on all the bottles and cartons of liquor which is duty paid. In the circular (Annexure P/4), it was observed that it was assumed by the officer issuing the instruction that under the previous instruction, all the bottles and cartons must be carrying such holograms affixed on it and, therefore, when any carton or bottles are found in the shops selling such liquor it may be presumed that the liquor was not duty paid and instant action should be taken against them.

5. Under these instructions, the learned counsel for the applicant submits, inter-alia, that in the present case firstly, the present applicant was not under the liability of affixing holograms on the bottles and cartons of the liquor and secondly, he submits that even if it is assumed that the present applicant was under the obligation to affix the hologram, the affixing of hologram is nowhere provided in the Act or Rules and, therefore, charges as aforesaid cannot be framed against

him for violation of any provision of Act and Rules.

6. During the argument, learned counsel for the State could not provide any provision of law or the Rules where affixing of hologram is made mandatory and the liability is placed on the licensee or the permit holder. So far as, the instruction issued by the Excise Commissioner is concerned that is only an executive instruction to ensure that only duty paid liquor should be sold in the market. The language used in the circular indicates that when boxes containing bottles of liquor are found without hologram then it may be presumed that such liquor is not duty paid and instant action should be taken, that is to say that it is to be enquired into whether the liquor is duty paid or not. Only when it is found that the liquor is not duty paid, the criminal proceeding should be initiated. As offence is, selling or transporting liquor, which is not duty paid and merely, because the cartons and the bottles are not affixed with holograms, such an omission is not punishable.

7. In this view of the matter in the present case, the bottles and the carton containing bottles of the liquor that was subject matter of this criminal case were not found to be not duty paid and it is only the case of the prosecuting agency that

the boxes and the bottles were found without holograms.

8. That be so, I find that the application deserves to be allowed and accordingly, the application is allowed. The proceeding against the present applicant pending before the Judicial Magistrate First Class, Ujjain in Crime No.4080/2011 so far as, it relates to the present applicant are quashed.

9. With the aforesaid observation and direction, this application stands disposed of.

(ALOK VERMA)
JUDGE