

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE

BEFORE HON.MR. JUSTICE ALOK VERMA, JUDGE

M.Cr.C. No.13134/2016

Dinesh S/o Ranchhor Pawar

Vs.

State of Madhya Pradesh

Shri Vivek Singh, learned counsel for the applicant.

Shri Pankaj Wadhvani, learned counsel for the respondent/State.

O R D E R

(Passed on this 15th day of March, 2017)

This application is filed under Section 482 Cr.P.C.for quashment of criminal proceedings pending in Criminal Case No.1195/2016 in the Court of Judicial Magistrate First Class, Badnawar, District- Dhar.

The relevant facts are that Police Station-Kanwan, District-Dhar a source information intercepted the truck bearing registration No.MP-09-KD-4507 in which 1200 boxes of beer were loaded. An

offence was registered under Section 34(2) & 44 of M.P. Excise Act by the Police Station- Kanwan, District- Dhar. The driver and the cleaner travelling in the truck, were not having valid license for transportation of the same. On investigation, it was found that the liquor was loaded from Government warehouse at Ujjain and it was to be delivered to license holder Ramesh Singh at Dewas. A permit was also issued, where the driving time from Ujjain to Dewas was stated to be 7.00 pm to 9.30 pm, however, the truck was seized by the police Kanwan, District Dhar, and therefore, there was a breach of conditions of permit and license.

This application under Section 482 Cr.P.C. is filed by the applicant on the ground that according to provisions of Section 61 of M.P. Excise Act, 1915, a cognizance by a Magistrate can only be taken on a complaint by the Collector or Excise Officer not below the rank of District Excise Officer as may be authorized by the Collector in this behalf. According to counsel for the applicant, the complaint was not filed by the Collector or District Excise Officer, who was specifically authorized for this behalf by the Collector, and

therefore, the Magistrate was not competent to take cognizance in this case.

The Section 61 of M.P. Excise Act as substituted by M.P. Act No.23 of 1979 provides as under :-

“61. Limitation of prosecutions.- (1) No court shall take cognizance of an offence punishable,-

(a) under [Section 34 for contravention of any condition of a license, permit or pass granted under this Act, Section 37], Section 38, Section 38-A, Section 39, except on a complaint or report of the Collector or an Excise Officer not below the rank of District Excise Officer as may be authorized by the Collector in this behalf;

(b) under any other section of this Act other than Section 49 except on the complaint or report of an excise Officer or Police officer.]

(2) Except with the special sanction of the State Government no Judicial Magistrate shall take cognizance of any offence punishable under this Act, or any rule or order thereunder, unless the prosecution is instituted within six months from the date on which the offence is alleged to have been committed”.

It is apparent that the present case is of breach of condition of permit the consignment should reach its destination before 9.30 pm, however, it could not reach its destination and the vehicle was searched and seized on 02.08.2016. The consignment was duty

paid, and therefore, the only criminal act on part of the present applicant was that he committed breach of conditions of permit when the vehicle was searched and seized.

Under these circumstances, it was necessary to follow the provisions of Section 61 of M.P. Excise Act, such provisions were not followed, and therefore, the proceedings before the learned Judicial Magistrate are liable to be quashed. Accordingly, this application is allowed. The proceedings pending before the Magistrate in Criminal Case No.1195/2016 are quashed.

The applicant is discharged from offence under Section 34(2) & 44 of M.P. Excise Act.

With aforesaid observations and directions, this application stands disposed of.

Certified copy, as per rules.

(Alok Verma)
Judge