

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 489 of 2015**

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SANTOSHSINH NARENDRASINH CHAUHAN....Applicant(s)

Versus

STATE OF GUJARAT....Respondent(s)

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Appearance:

MR NM KAPADIA, ADVOCATE for the Applicant(s) No. 1

MS NISHA THAKORE, APP for the RESPONDENT(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE J.B.PARDIWALA**

**Date : 02/03/2017**

**ORAL ORDER**

RULE returnable forthwith. Ms. Thakore, the learned APP waives service of notice of rule for and on behalf of the respondents.

By this application under Section 482 of the Code of Criminal Procedure, 1973, the applicant seeks to invoke the inherent powers of this Court, praying for quashing of the First Information Report being Prohibition C.R. No.5265 of 2014 registered at the Odhav Police Station, Ahmedabad, for the offence punishable under Sections 66(b), 65A,E, 116B and 81 of the Gujarat Prohibition Act.

The case of the prosecution is that the residential premises of one Rajubhai Jaiswal was raided and huge quantity of liquor was seized. In the course of the investigation,

Rajubhai Jaiswal disclosed the name of the present applicant as the supplier of the contraband.

It appears that the police was unable to apprehend the applicant herein and, therefore, he was shown as an absconding accused in the charge-sheet filed against Raju Jaiswal. The charge-sheet filed against Raju Jaiswal culminated in the Criminal Case No.5718 of 2014. Raju Jaiswal came to be acquitted by the trial Court vide judgment and order dated 12<sup>th</sup> November 2014.

The case of the prosecution is that the applicant is a noted bootlegger with antecedents. There are in all 12 cases registered so far against him, 10 under the Gujarat Prohibition Act and 2 for the offences under the Indian Penal Code.

According to the prosecution, the applicant, as on date, is absconding and a warrant of his arrest under Section 70 of the Code of Criminal Procedure has been issued.

Mr.Kapadia, the learned counsel appearing for the applicant, submitted that there is not an iota of evidence to connect the applicant herein with the seizure of the contraband. He submits that except the statement of the co-accused, there is no other legal evidence on record. He further submitted that once the principal accused has been acquitted and the seizure has been disbelieved by the trial Court, the case should rest at that stage itself, and putting the applicant herein to trial is impermissible in law.

Ms.Thakore, the learned APP appearing for the State has

vehemently opposed this application. She submitted that having regard to the antecedents of the applicant and the fact that he is absconding as on date, this application should not be entertained.

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

Ms.Thakore, the learned APP, after taking instructions from the Investigating Officer, submitted that except the statement of the co-accused, there is no other legal evidence to connect the applicant herein with the alleged offence. She further confirms the acquittal of the co-accused by the trial Court.

I am afraid, antecedents would not constitute legal evidence to prosecute a person. The statement of the co-accused would also not constitute legal evidence to put the accused to trial.

In the aforesaid context, I may refer to a decision of the Supreme Court in the case of Satish Mehra v. State (NCT of Delhi) and another, (2012)13 SCC 614. I may quote the observations made in paragraph 21 thus :

*“A criminal trial cannot be allowed to assume the character of fishing and roving enquiry. It would not be permissible in law to permit a prosecution to linger, limp and continue on the basis of a mere hope and expectation that in the trial some material may be found to implicate the accused. Such a course of action is not*

*contemplated in the system of criminal jurisprudence that has been evolved by the courts over the years. A criminal trial, on the contrary, is contemplated only on definite allegations, prima facie, establishing the commission of an offence by the accused which fact has to be proved by leading unimpeachable and acceptable evidence in the course of the trial against the accused. We are, therefore, of the view that the criminal proceeding in the present form and on the allegations levelled is clearly not maintainable against either of the accused – appellant G.K. Bhat and R.K. Arora.”*

I am left with no other option but to quash the First Information Report.

In the result, this application is allowed. The First Information Report being Prohibition C.R.No.5265 of 2014 registered at the Odhav Police Station, Ahmedabad, is hereby ordered to be quashed. Rule made absolute. Direct service is permitted.

(J.B.PARDIWALA, J.)

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