

ORDER BELOW EXH. 1

1. The present charge-sheet is filed for the offence punishable under the provisions of the Bombay Prohibition Act. It is the case of prosecution that contraband liquor in violation of provisions of said Act was found in possession of accused and same was seized by police. Further, police drawn a sample out of seized liquor and sealed it and sent it to laboratory for chemical analysis. However, there is nothing on record to show that from the date of seizure of liquor till the sample was handed over to the carrier for carrying the same to the laboratory, the sealed sample was kept in police malkhana for safe custody so as to avoid tampering with it. Further, the place where said sample was kept during said period is also not mentioned, In this regard, there is a test memo prepared for sending the sample to laboratory, However, there is nothing therein to show as to when the sealed sample of alleged liquor was deposited in police malkhana and when it was withdrawn from malkhana for dispatching the same to laboratory for analysis.

2. Further, if it is presumed that said sample was placed in police malkhana, then the investigating officer out to have filed on record the certified copy of malkhana register showing entry to that effect. However, same is no filed on record. Moreover, who was in-charge of police malkhana at the relevant time is also not mentioned by investigating officer and his statement is also not recorded. Further, he is not shown as a witness in the column of witnesses in the charge-sheet. As such, it raises a serious doubt about the truthfulness of the case of prosecution.

3. Thus, failure on part of investigating officer to file on record 'the copy of malkhana register leads to a missing link in the entire series of investigation raising doubt over the reasonable and rational manner of investigation as is expected from prosecution. In this regard, Hon'ble Supreme Court in the case of *State of Rajasthan V/s Gamma Singh, Appeal (crl.) 7179 of 1999 decided on 23/02/2005*, while dealing with the case under the provisions of Narcotic Drugs and Psychotropic Substances Act. 1985 held that, non production of malkhana register for proving that the seized articles were kept in police malkhana and failure to send sample seal for the purpose of comparing with the seal appearing on the sample bottles is fatal to the prosecution and accordingly, the acquittal of accused by High court was confirmed by Hon'ble Supreme Court.

4. Thus, in view of above discussion, the investigation carried out by investigating officer is faulty, shabby and perfunctory. In such circumstances, proceeding with this case would be wastage of Judicial time and hence, it is a fit case wherein the proceeding can be stopped as per section 258 of The Code of Criminal Procedure Code, 1973. Therefore, I pass the following order.

ORDER

1. The proceeding is stopped as per section 258 of The Code of Criminal Procedure, 1973.
2. The seized muddemal be sent to State Excise Department for disposal according to law, if not disposed earlier.

Date: 11.03.2026

(Smt.A.T.Bansod)
Judicial Magistrate First Class,
Tirora.