

ORDER BELOW EXH. 1

The Hon'ble District Court, Solapur by letter No. B-23/5379/2024 dated 28/06/2024, has directed to hold a Special Drive, hence the present case is taken on today's Special Drive for appropriate order. Accordingly, summons was also issued to the accused in view of this Special Drive.

2) The police have submitted the charge sheet for the offence punishable under section 65(e) of the Maharashtra Prohibition Act. Perused record and proceeding of the case. The case is pending for appearance of the accused. The concerned clerk has filed report below Exh.1 that, till today C.A. report is not filed on record. Further despite issuance of summons, the concerned police station has not filed report of service and the accused has not appeared before the Court.

3) Here it is to be noted that, the *Hon'ble High Court of Bombay in Mulchand Raka Vs. State of Maharashtra 1996 (1) Bom.C.R.316* held that Section 258 of Cr.P.C. can be resorted to where the special or unusual circumstances exists such as non appearance of the accused before the Court for considerable time, which make it difficult or impossible for the Magistrate to proceed with the case in a normal way and in such situation without any hindrance the provisions of Section 258 of Cr.P.C. can be resorted to.

4) Further the *Hon'ble Kerala High Court and Ernakulam in the case of sumoto High Court of Kerala, Ernakulam Vs. State of Kerala and another, O.P (CRL) No.809 of 2023 dated 05th Dec. 2023* has discussed provision of section 258 at length. The Hon'ble High Court has observed that, the power vested in a magistrate is to be sparingly exercised only in appropriate cases, where proceeding with the case would amount to an abuse of the process of law or result in undue harassment of the accused or otherwise result in a miscarriage of justice. The primary intent of legislation was to prevent the wastage of time of courts and to reduce backlog of cases, increasing time and economic efficiency.

5) In the present matter, summons has issued to the accused, however till today report has not filed by concerned Police station. Since last two years CA report is not filed on the record. Further record shows that, in this matter proper procedure has not been followed while conducting seizure panchnama. Therefore, there seems defect and lacuna in prosecution case. In this situation prima-facie there seems no strong material against the accused. In this situation considering the nature of present case, quantity of seized muddemal and ratio of the above mentioned case no purpose would be served by keeping it pending on the file of this Court. It will amount to an abuse of process of law. The matter is two years old. In this situation to prevent the wastage of time of court and to reduce backlog of cases, it would be proper to invoke power under section 258 of Cr.P.C. Therefore, considering the above circumstances, this is the fit case for invoking the

powers under section 258 of Criminal Procedure Code. However, the prosecution is at liberty to revive the proceeding on the arrest or securing presence of accused by showing justifiable grounds. Hence, I pass the following order.

ORDER

1. The accused Rahul Rajendra Ikurke is discharged for the offence/u/s.65(e) of the Bombay Prohibition Act, 1949 and proceedings of this case are hereby stopped; vide section 258 of the Code of Criminal Procedure, 1973.
2. The muddemal liquor if not disposed, it be sent to the concerned officer of State Excise Department, Solapur for disposal as per rule, after appeal period is over.
3. The original police papers be retained in "C" file for their use in the event of reopening the case under Section 300(5) of the Code of Criminal Procedure.

Date :- 25/07/2024

(Smt. H.U.U.Patil)
Judicial Magistrate, F.C. Barshi.

CERTIFICATE

I affirm that the contents of this PDF file Judgment/Order is same word to word as per the original Judgment / Order

(a)	Name of the Stenographer	:	S.V. Kokate (Grade III)
(b)	Court	:	Smt. H.U.U. Patil 4 th Jt. Civil Judge, J.D.& J.M.F.C.Barshi
(c)	Judgment /Order signed by PO. on	:	25/07/2024
(d)	Judgment /Order uploaded on	:	26/07/2024