



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR. JUSTICE M.NAGAPRASANNA

WRIT PETITION NO. 7706 OF 2026 (GM-RES)

BETWEEN:

SRI T M KRISHNAMURTHY
S/O LATE MUDDARANGE GOWDA,
AGED ABOUT 62 YEARS,
R/AT NO. 31/A, 2ND STAGE,
3RD BLOCK, D CROSS, NAGARABHAVI,
BENGALURU- 560 072.

...PETITIONER

(BY SRI. SHESHA KARTHIK M REDDY., ADVOCATE)

AND:

1. STATE BY EXCISE DEPARTMENT POLICE
GNANABHARATHI RANGE,
SUBDIV 06 SUBDIVISION, GNANABHARATHI,
BENGALURU, REPRESENTED BY
STATE PUBLIC PROSECUTOR,
SPP OFFICE, HIGH COURT BUILDING,
KARNATAKA HIGH COURT,
AMBEDKAR VEEDHI, BENGALURU 560 009.
2. SRI. CHANDRASHEKHER,
S/O OF NOT KNOWN
AGED ABOUT NOT KNOWN
WORKING AS, EXCISE SUB-INSPECTOR,
OFFICE AT EXCISE DEPUTY COMMISSIONER,
SUB DIVISION 06, BUD 03,
BENGALURU- 560056.

Digitally signed by
SANJEEVINI J
KARISHETTY
Location: High
Court of Karnataka



...RESPONDENTS

(BY SRI. RAHUL RAI, HCGP)

THIS WP IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR RECORDS2. ISSUE A WRIT OR ORDER IN THE NATURE OF CERTIORARI QUASHING THE ENTIRE PROCEEDINGS IN CC NO. 17167/2025 ARISING OUT OF CHARGESHEET FILED IN CRIME NO.45/2023-24/380SIE/380308, DATED 02.06.2024 REGISTERED BY THE RESPONDENT NO.1-POLICE FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 11, 14, 32, 38(A) AND 43 OF KARNATAKA EXCISE ACT, 1965 AND COGNIZANCE ORDER DATED 30.05.2025 TAKEN BY THE LEARNED XXIV ACJM, BENGALURU, CONSEQUENTLY THE ENTIRE PROCEEDINGS ARISING THEREOF AS AGAINST THE PETITIONER/ACCUSED NO.2. (VIDE ANNEXURE - B AND C) 3. ISSUE SUCH OTHER ORDER OR DIRECTION AS DEEMED FIT IN THE CIRCUMSTANCES OF THE CASE, IN THE INTEREST OF JUSTICE.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: **HON'BLE MR. JUSTICE M.NAGAPRASANNA**



ORAL ORDER

Heard Sri. Shesha Karthik M. Reddy, learned counsel appearing for the petitioner and Sri. Rahul Rai, the learned HCGP appearing for the respondents.

2. The petitioner is before this Court calling in question the proceedings in C.C.No.17167/2025 registered for the offence punishable under Sections 11, 14, 32, 38(A) & 43 of Karnataka Excise Act, 1965.

3. The learned counsel appearing for the petitioner would submit that the issue in the *lis* stands covered by the judgment rendered by this Court in the case of **PARASHURAM**

Vs. THE STATE OF KARNATAKA¹, has held as follows:

"1. The petitioner is before this Court calling in question the proceedings in C.C.No.3458 of 2023 registered for offences punishable under Sections 14, 15, 32(1) of the Karnataka Excise Act, 1965.

2. Heard the learned counsel Shri Manoj N. Bikkannavar appearing for the petitioner and the learned AGA Shri Sharad V. Magadum appearing for the respondent.

3. Facts in brief germane are as follows:

¹ CRL.P.No.103080/2023 disposed on 21.01.2025



On a suo motu complaint so registered on 22.04.2023 at about 12:00 p.m., the petitioner caught having 175 tetra packs each of 90 m.l. whisky. The same was seized from the hands of the petitioner. The seizure was then reported and a crime came to be registered in crime No.84 of 2022. The Police after investigation filed a charge sheet and the matter is pending as C.C. No.3458 of 2023. Filing of the charge sheet and summons so issued is what has driven the petitioner to this Court in the subject petition.

4. Learned counsel for the petitioner submits that what was seized from the hands of the petitioner was 175 tetra packs but what was sent to the FSL for testing was 26 tetra packs, and therefore he should be made liable for penal consequences only for 26 tetra packs of 90 m.l. whisky. If 26 tetra packs are considered it would amount to 2.3 liters which is well within the limit that the petitioner can carry. Learned counsel would apart from contending that there is gross procedural violation would seek quashment of the proceedings.

5. Learned AGA on instructions would submit that 175 tetra packs were seized and therefore the petitioner must not be let to go scot free as he has violated the provisions of the Act. To a pointed query of the Court as to why only 26 tetra packs were sent to FSL and what happened to the remaining 149 tetra packs, there is no answer. Therefore 149 tetra packs of 90 m.l. whisky have vanished. The issue now would be whether the petitioner should be permitted to be prosecuted for an offence of holding 26 tetra pack of 90 m.l. of whiskey which comes to about 2.3 liters, which is well within the permissible limits of carrying. The issue need not detain this Court for longer dwell deep into the matter. In an identical issue projected before the Coordinate Bench. The Coordinate Bench has held as follows:

"8. On perusal of the records, it reveals that as per the complaint made by the excise officer the petitioner accused No.1 said to be carried 20 bottles of different liquor containing 15 liters and which is said to be a



military liquor is not for sale in open market. The same was seized by the respondent department under the panchanama on 2.10.2020. As per Section 53 of Excise Act, before such seizure, the warrant shall be obtained from the Magistrate, however, as per Section 54 of the Excise Act, if any cause, the excise officer or police unable to obtain the warrant they shall record the reason as there is every possibility of the accused escape or conceal the evidence of the offence. Then only, the respondent police or excise officer can search and seize the liquors. Admittedly, the respondent did not obtain any warrant from the magistrate as required under Section 53 of the K.E. Act. However, the excise officer recorded the reason stating that there is no possibility for obtaining the warrant from the court. Therefore, the said officer himself prepared the record of reason on the spot, but on perusal of the seizure panchanama dated 2.10.2020 at 12.15 p.m. which reveals that panchanama was hand written by the one of the officials. but record of reason is cyclostyled form and computerized one. As per the panchanma they got credible information about transporting the liquor, therefore, they waited near Ambedkar stadium road. At that time the motor cycle of the accused NO.1 came. It is not the case of respondent that they prepared the record of reason prior to proceeding to the spot. But, they stated in the record of reason that on the spot it was prepared. If the record of reason is prepared on the spot, it must have been on the hand writing, but it could not be computerized. Since theseizeure panchanama is hand written, it appears that after the arrest and seizure of the liquor the excise department prepared the record of reasons in their office.

9. That apart, when the FIR sent to the Magistrate, the record of reason not sent to the Magistrate along with FIR in order to show that they are unable to obtain the warrant and therefore, they conducted search and seizer of the liquors . There is no endorsement of the magistrate on the FIR and on the record of reason under Section 54 of the K.E. Act, which reveals that the record of reason not accompanied the FIR when the FIR reached the magistrate which categorically suggest the respondent searched and seized the liquor without warrant and not recorded the reason as required under section 54 of the Act.

In a similar circumstance, this court also quashed the proceedings in the case of Sunitha and Anr Vs. State of Karnataka, Excise Inspector in Crl.Rev P.2315/2013



dated 19.7.2022, where in this Court has held without registering FIR and seizing the articles is nothing but commencement of investigation prior to the registering of FIR and not recording the reasons under Section 54 of Excise Act without obtaining warrant and registering the case amounts to violation of mandatory procedure, therefore on that ground, the search and seizer vitiate and prosecution cannot be sustained.

10. That apart, the alleged seized article is 20 bottles, but it the Investigating Officer only 6 bottles to the FSL for chemical examination but not entire bottles. Though the investigation officer said to have seized 20 bottles of 15 liters but he has sent only 6 bottles for chemical analysis and without sending the entire bottles for verifying the liquors, the Court cannot presume against the accused that the entire bottles are liquors.

11. That part, the petitioner Counsel stated that the petitioner No.1 is ex-service man and there are labels on the bottles, mentioning that is military liquor and it is not sold in the open market. Admittedly, the petitioner might have purchased from the military canteen and kept in the house and of course, he has not produced any bills but it does not mean that the Excise Officer/ Investigating Officer should not make any enquiry with the military canteen. Absolutely, there is nothing on record to show that investigation officer has verified from which canteen the liquor was purchased. Therefore, there is a flaw in the investigation, not only search and seizure but also in filing the charge sheet. Therefore, the trial cannot be sustained against the petitioner No.1.

12. In respect of accused No.2 who is only registered owner of scooter in which accused NO.1 was travelled at the time of incident. There is no investigation by the investigation officer that accused NO.2 given the vehicle with the knowledge that the vehicle will be used by accused No.1 for carrying the liquor. Even other wise, accused No.1 and 2 are father and son. Therefore, accused No.1 could have taken the vehicle without the knowledge of accused No.2 in this aspect, there is no investigation conducted and no voluntary statement recorded by the investigation officer to show that accused No.2 with an intention and knowledge given the vehicle to accused No.1to transport or to carry liquor. Therefore, in view of the above said reasons the



proceedings against the petitioner NOs.1 and 2 are liable to be quashed.

13. Though, the accused No.1 being an ex-army man who is entitled to receive the liquor from the military canteen but he ought not to have carried on dry day i.e. on 2.10.2020 which is Gandhi Jayanthi. The military person should respect the Father of Nation more than an ordinary citizen and he should not have forgotten the Gandhi Jayanthi day. However, in view the faulty investigation and non compliance of the mandatory provision of section 54 of K.E.Act and not sending the entire bottles to the FSL for chemical analysis, the entire proceedings cannot be sustainable. Therefore, the criminal proceedings against the petitioners are liable to be quashed.

Accordingly, the petition is allowed.

The criminal proceedings in C.C.No.2232/2021 against accused Nos.1 and 2 on the file of V Additional CMM, Bangalore, for the offences punishable under Sections 11, 14, 15, 32, 34, 38A and 43 of K.E. Act are hereby quashed."

6. For the aforesaid reason, the proceedings *qua* petitioner is liable to be quashed, accordingly, I pass the following:

ORDER

(i) The petition is allowed.

(ii) The proceedings in connection with C.C. No.3458/2023 (Crime No.84/2022) registered by the Karnataka Excise Department, Athani Sub Division for the offences punishable under Sections 14, 15, 32(1) of the Karnataka Excise Act 1965 pending on the file of the Prl. Civil Judge, and JMFC Athani are quashed."

4. In the light of the issue standing covered by judgment rendered by the Co-ordinate Bench and the facts



being undisputed, the petition stands disposed on the same terms. Accordingly, I pass the following:

ORDER

(i) The petition is allowed.

(ii) The proceedings in connection with C.C. No.17167/2025 (Crime No.CS 45/2023-24/380SIE/380308) registered by the KARNATAKA EXCISE DEPARTMENT, GNANABHARATHI RANGE, SUBDIV-06, SUB-DIVISION, GNANABHARATHI, BENGALURU for the offences punishable under Sections 11, 14, 32, 38(A) & 43 of the Karnataka Excise Act 1965 pending on the file of the learned XXIV ACJM, Bengaluru, insofar it relates to the petitioner-accused No.2 herein are quashed.

**SD/-
(M.NAGAPRASANNA)
JUDGE**

HR
List No.: 1 Sl No.: 100