

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

(1) S.B. Criminal Miscellaneous (Petition) No. 4889/2020

Puneet Solanki S/o Vijender Solanki, Resident Of Wz306 Palam Village, South West Delhi

----Petitioner

Versus

1. State Of Rajasthan, Rajasthan High Court, Jaipur
2. Jitendra Kumar Solnky, Sho, Bhiwadi, District Bhiwadi
3. Superintendent Of Police, Bhiwadi, District Bhiwadi
4. Station House Officer, Bhiwadi, District Bhiwadi
5. Golden Bottling Limited, Through Its Director, 780, Bhiwadi Industrial Area, Phase Second, Bhiwadi, Alwar

----Respondents

Connected With

(2) S.B. Criminal Miscellaneous (Petition) No. 5317/2020

Abhishek Kharb S/o Harpal Singh Kharb, Aged About 29 Years, R/o C-9283, Vasant Kunj New Delhi-110070.

----Petitioner

Versus

1. State Of Rajasthan, Through Pp.
2. Superintendent Of Police, Bhiwadi (Raj.)
3. Jitendra Solanki, Sho, P.s. Bhiwadi, District Bhiwadi (Rajasthan)

----Respondents

(3) S.B. Criminal Miscellaneous (Petition) No. 5345/2020

Surendra Solanki Son Of Shri Ashok Solanki, Aged About 41 Years, R/o House No. Wx-3, Asalatpur, Janakpuri, New Delhi.

----Petitioner

Versus

1. State Of Rajasthan, Through P.p.
2. Superintendent Of Police, Bhiwadi (Raj.)
3. Jitendra Solanki, Sho, P.s. Bhiwadi, District Bhiwadi (Rajasthan)

----Respondents

(4) S.B. Criminal Miscellaneous (Petition) No. 5522/2020

1. Ashok Solanki S/o Shri Bhim Singh, Aged About 70 Years, R/o House No. Wx-3 Asalatpur, Janakpuri New Delhi.
2. Ankit Gulania S/o Shri Vinod Kumar, Aged About 27 Years, R/o Barkatabad (63) Bahadurgarh, Jhajjar, Haryana
3. Akshay S/o Jai Prakash, Aged About 27 Years, R/o 320 Gali State Bank Bharthal Village South West Delhi Delhi.

-----Petitioners

Versus

1. State Of Rajasthan, Through P.p.
2. Superintendent Of Police Bhiwadi, Raj.
3. Jitendra Solanki, Sho, P.s. Bhiwadi Distt. Bhiwadi Raj.

-----Respondents

(5) S.B. Criminal Miscellaneous (Petition) No. 5908/2020

1. Pradeep Mishra S/o Shri Ramprakash, R/o Kilosa, Thana Tamajin, District Banda, Uttar Pradesh.
2. Kundan Kumar S/o Umesh Singh, R/o Jalalpur, Thana Kaako, District Jahanabad, Bihar.
3. Shailendra Singh S/o Shri Maha Singh, R/o Thaska Guhana, Thana Baroda, District Sonapat, Haryana.
4. Pawan S/o Rajkumar, R/o Thaska Guhana, Thana Baroda, District Sonapat, Haryana.
5. Virendra S/o Gangaram, R/o Rukhi, Thana Baroda, District Sonapat, Haryana.

-----Petitioners

Versus

1. State Of Rajasthan, Through Pp.
2. Superintendent Of Police, Bhiwadi (Raj.)
3. Jitendra Solanki, Sho, P.s. Bhiwadi District Bhiwadi (Rajasthan).

-----Respondents

(6) S.B. Criminal Miscellaneous (Petition) No. 11/2021

1. Amar Singh S/o Shri Gurubachan Singh, Aged About 78 Years, R/o House No. 32, Prabhu Prempuram, Jagadhari Road, Khojkipur, Khojkipur Part 101, Ambala, Distt. Ambala (Haryana)

2. Mandeep Singh S/o Amar Singh, Aged About 32 Years, R/o House No. 32, Prabhu Prempuram, Jagadhari Road, Khojkipur, Khojkipur Part 101, Ambala, Distt. Ambala (Haryana)

-----Petitioners

Versus

1. State Of Rajasthan, Through P.p.
2. Jitendra Singh Solanky, Sho, Ps Bhiwari Distt. Bhiwari (Alwar)

-----Respondents

For Petitioner(s)	:	Mr. Swadeep Singh Hora, Adv.
For Respondent(s)	:	Dr. VB Sharma, AAG with Mr. Harshal Tholia, Adv.

HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Judgment / Order

Reserved On 22/02/2021

Pronounced On 31/03/2021

REPORTABLE

1. These six criminal misc. petitions have been filed assailing action of Police of the Police Station, Bhiwadi alleging that an illegal and ill-motivated raid was conducted in the premises of factory of the Golden Bottling Company, Bhiwadi which is engaged in manufacturing and bottling Indian Made Foreign Liquor (IMFL) as well as Country Liquor in terms of the license issued to it by the Rajasthan Excise Department.

It is further alleged that without there being any complaint from any other person an FIR bearing No.615/2020 was registered by the SHO at his own on 12/10/2020 wherein he stated that while he was on patrolling duty in the area on 11/10/2020, he received information through an informant at 12.55 PM that in the garb of producing/manufacturing Country Liquor, manufacturing of

IMFL was being done in the factory premises and at 1.20 PM when the SHO, Police Station, Bhiwadi reached the Women Police Station, Bhiwadi, he was informed that one Sub-Inspector from Gujarat Police with his team wanted assistance to some licit information from the Golden Bottling Company, Bhiwadi. In the aforesaid background, a search party was constituted and a raid on the factory premises of the aforesaid bottling company was conducted at 1.30 PM on 11/10/2020. During the course of search/raid, the Excise Officer joined the proceedings. The FIR was registered by the SHO, Bhiwadi mentioning that the Company does not have any license for IMFL and it was alleged that the workers in the Company informed that under the guise of country made liquor license, different brands of liquor were being manufactured without authority and were being smuggled to Bihar and Gujarat. Total 10077 cartoons were seized from the factory which included 1200 cartoons loaded in the vehicle.

It was also mentioned in the FIR that empty cartoons were lying in the factory premises and the cartoons wherein the liquor was packed did not contain warning of liquor being dangerous for health and without putting batch numbers and without paying the excise revenue, the liquor was being manufactured so that it may be smuggled to Gujarat and Bihar and in such a way, the SHO registered the aforesaid FIR against the owners of the Company as well as its employees under Section 308 IPC, Sections 14, 16, 19 and 54 of the Rajasthan Excise Act, 1950.

At the same time, the Excise Officer, who had accompanied the Police, on the other hand, registered an FIR against the Company and its owners under Section 58C of the Rajasthan Excise Act, 1950 alleging that the work was being done in the

night and there was violation of conditions of license. The offence under Section 58C of the Excise Act is punishable with fine alone to the maximum of Rs.5000/-

On the same day, the Excise Officer registered FIR under Section 58(C) of the Rajasthan Excise Act, 1950.

The petitioner- Mr.Surendra Solanki, who was the major share holder, was arrested from his house in Delhi at about 4.00 pm on 12/10/2020 after breaking of the door of his house and was brought to Bhiwadi where he was shown to have been arrested at 10.00 PM at Bhiwadi. It is alleged that no notice under Section 41 Cr.P.C. was served on him before arresting him.

Petitioner- Ashok Solanki, who is father of Surendra Solanki has also filed a petition submitting that the police entered the premises and sought to arrest him also.

Petitioner-Puneet Solanki has preferred petition stating that he is not connected with the Company and neither he is employee nor the signing authority nor holding any post in the Company but he was also made an accused in the FIR.

Two trucks, which were parked in the factory, were also seized. A computer, CPU and the accounts of the factory were also seized alongwith DVR and CCTVs.

Petitioners-Mr. Pradeep Mishra and Mr. Abhishek Kharb, who are employees of the Company and were working and were present in the factory premises of the Company, were arrested.

Petitioners-Mr. Amar Singh and Mandeep Singh, who are registered owners of the two vehicles, have also preferred petition mentioning that they were transporters and their vehicles were stationed in the premises.

2. It is commonly stated on behalf of the petitioners that the bottling plant by the name of Golden Bottling Company was a private limited company duly registered with the Registrar of Companies. The Directors of the Company were Mr. Rajender Singh, Mr. Ashok Kumar Solanki and Mr. Aman Kumar at that relevant time. Mr. Surendra Solanki had retired from the post of Director on 18/03/2019 and was not connected with the day to day functions of the Company. The Company holds a valid license for manufacturing IMFL as well as valid license for manufacturing and sale of Country Liquor.

It is alleged that both the licenses were duly shown by Mr. Pradeep Mishra, Manager of the Company to the concerned Police Officers but in-spite thereof, the raid was conducted without authority and in violation of the provisions of the Excise Act by the SHO. It is stated that the Excise Inspector, who came later on, found offence under Section 58-C of the Rajasthan Excise Act, 1950 to be prima-facie made out against the Company for violation of the conditions of the license wherein only fine is to be imposed. However, it is alleged that the Police Authorities with a view to support the local liquor cartels registered a case under Section 54 of the Rajasthan Excise Act to falsely implicate the petitioners and others and also registered case under Section 308 IPC for the reason that health warning was not found marked on the packing material and on the liquor bottles. It is stated that the goods were not transported out for sale or distribution and the work of packaging was not completed. The arrest was made illegally and unjustifiably.

3. Learned counsel for the petitioners submitted that from bare reading of contents of the FIR, no case is made out either under

Section 308 IPC or under Sections 14, 16, 19 and 54 of the Rajasthan Excise Act and therefore, the FIR deserves to be quashed. It is submitted that the Police had entered the premises without there being any authority available to him and they could not have undertaken any search or seizure operation. The power under Section 43 of the Excise Act is only available with the Excise Inspector authorized for the said purpose. It is further submitted that the Police is harassing and conducting parallel investigation relating to the manufacturing unit which is duly licensed under the Excise Act and as there was already an Excise Inspector appointed by the Excise Department for the purpose of day to day supervision of the factory, the special power available to such Inspector, could not have been taken over or usurped by the Police. His further submission is that the Police Authorities, for extraneous considerations and with a view to help the local liquor cartels, which are engaged in illegal manufacturing of liquor, has carried out the raid illegally and without any authority. There was no occasion to presume that the bottling plant was having no license of manufacturing IMFL as the bottling plant is established since long at the premises and was not a new unit. The local Police was having ample knowledge about the activities being done at the bottling plant since long and a false and fabricated story was created in order to harassing and illegally arresting the share holders of the Company. It is submitted that the Excise Officer has not registered case under Section 14, 16, 19 read with Section 54 of the Excise Act although admittedly, he was present at the site. Mentioning of such offences in the FIR registered by the SHO shows high handedness and bullying attempt of the Police. It is submitted that the Police was not the Special Agency and had no

authority, moreover there was no document mentioned in the FIR to show that the petitioners were engaged in smuggling liquor to Gujarat and Bihar. The mentioning of such allegations in the FIR itself shows a biased and malicious approach of the SHO for extraneous purposes and considerations. The entire proceedings were vexatious and the Police Officials deserve to be punished for having misused their power in closing down a running factory which had due license and also wrongfully arresting the petitioners.

Learned counsel further submitted that no case under Section 308 IPC can be said to be made out and the FIR was a colourable exercise of power and suffered from malice in law.

4. Written submissions have also been filed on similar grounds by posing questions.

5. A detailed reply has been filed by the Police Authorities and written submissions have also been filed. The Police Authorities have changed counsels from one to another and ultimately Additional Advocate General argued on their behalf. It is stated by the Police that in the course of investigation and after recording statements of complainant and other witnesses, it was found that the petitioners were involved in illegal procurement of spirit and other allegations are levelled with regard to the vehicle having different chassis number. The allegations have also been levelled that the spirit for manufacturing liquor was being procured illegally from Karnal. The liquor has been transported to various places in different States which is in conflict with the statutory provisions and has caused loss to the Excise Department and the State Exchequer. It is stated that unauthorized labels have been seized. It is also stated that the Trucks were seized in Gujarat and UP

which contained liquor transported through the accused Company and it is asserted that the liquor so seized was actually manufactured in the Company at Bhiwadi.

The respondents have further asserted that there are express and implied provisions of law enabling the Police Officer to initiate legal action with regard to commission of punishable offence. It is further stated that the FIR registered at Police Station cannot be said to be the same with that of the FIR registered by the Excise Department as the offences alleged in both were different. It is further submitted that inherent power under Section 482 Cr.P.C. should not be exercised by this Court.

6. Taking into consideration the aforesaid aspects, this Court has to examine whether the FIR registered by the Police Authorities without there being any complaint from any corner under Section 14, 16, 19 read with Section 54 of the Excise Act as well as under Section 308 IPC, deserve to be quashed and whether the course of action adopted by the Police Officials was justified, legal and proper ?

7. Sections 9, 10, 14, 16, 19, 43, 44, 45, 46, 47, 48, 50, 54, 58, 61 and 67(1)(a) of the Rajasthan Excise Act, 1950 read as under:-

"9. Appointment of Commissioner and Excise Officers.- (1) *The State Government shall appoint an Excise Commissioner and may appoint as many Additional Excise Commissioners as may be deemed necessary, for the whole of those parts of the State of Rajasthan to which this Act extends.*

(1-A) The State Government may also appoint such and so many other persons, as it thinks fit and necessary to be:-

(i) Joint Excise Commissioners

(ii) Deputy Excise Commissioners

(iii) District Excise Officers;

(iv) Assistant Excise Officer;

(v) Other inferior Excise Officers.

(1-B) The State Government may prescribe duties and powers to be performed and exercised by each officer or class of officers appointed under Sub-sections (1) and (1-A).

(2) The State Government may delegate to the Excise Commissioner such powers of the State Government conferred by this Act, as it may specify, except the power to make rules thereunder.

(3) The State Government may also authorise the Excise Commissioner to delegate to any of his subordinate officers such of his powers under this Act as may be specified."

"10. Appointment of officers and conferring powers.- (1) The State Government may-

(a) empower any officer to perform the acts and duties mentioned in Chapter VIII, and

(b) order that all or any of the powers and duties assigned to an officer of the Excise Department under this Act shall, subject to the provisions thereof, be exercised and performed by any officer other than an officer of the Excise Department or by any other person."

"14. Passes necessary for import export and transport.- No excisable article exceeding such quantity as the State Government may prescribe by notification in the Official Gazette either generally for all the territories of the State of Rajasthan to which this Act extends or for any local area comprised therein shall be imported, exported or transported except under a pass issued under the provisions of the next following section:

Provided also, unless the State Government shall otherwise direct, that no pass shall be required for transport of any excisable article or intoxicating drug exported under a pass issued by an officer duly authorised in this behalf from any place beyond the limits of those parts of the State of Rajasthan to which this Act extends to any other place beyond the said limits."

"16. Manufacture of excisable article prohibited except under the provisions of this Act.- (I) (a)

No excisable article shall be manufactured,

(b) no hemp plant (*Cannabis Sativa*) shall be cultivated,

(c) no portion of the hemp plant (*Cannabis Sativa*) from which intoxicating drug can be manufactured shall be collected,

(d) no liquor shall be bottled for sale,

(e) no Tari producing tree shall be tapped,

(f) no Tari shall be drawn from any tree, and

(g) no person shall use, keep or have in his possession any materials, still, utensil, implement, instrument or apparatus whatsoever for the purposes of manufacturing any excisable article, except under the authority and subject to the terms and conditions of a Licence granted in that behalf by the Excise Commissioner or by an Excise Officer duly empowered in this behalf.

(2) No distillery, brewery or pot-still be constructed or worked except under the authority and subject to the terms and conditions of a licence granted in that behalf by the Excise Commissioner."

"19. Possession of excisable articles in excess of the quantity prescribed by the State Government prohibited except under permission.-

(1) No person not being licenced to manufacture, cultivate, collect or sell any excisable article, shall have in his possession any quantity of such article in excess of such quantity as the State Government has, under Section 5, declared to be the limit of sale by retail, except under a permit granted by the Excise Commissioner or by an Excise Officer duly empowered in that behalf.

(2) Sub-section (1) shall not extend to

(a) any foreign liquor (other than denatured spirit) in the possession of any common carrier or warehouse man as such, or

(b) [Omitted]

(3) A licenced vendor shall not have in his possession at any place other than that authorised by his Licence, any quantity of any excisable article in excess of such quantity as the State Government has under Section 5 declared to be the limit of sale by retail, except under a permit granted by the Excise Commissioner or by an Excise Officer duly empowered in that behalf.

(4) Notwithstanding anything contained in the foregoing sub-sections, the State Government may by notification in the Official Gazette prohibit or restrict the possession by any person or class of persons, or subject to such exceptions as may be specified in the

notification, by all persons in those parts of the State of Rajasthan to which this Act extends or any specified area or areas thereof, of any excisable articles either absolutely or subject to such conditions, as it may prescribe."

"43. Power to enter and inspect place of manufacture and sale.- The Excise Commissioner or any Excise Officer not below such rank as the State Government may prescribe may-

- (a) enter and inspect at any time by day or by night any place in which any licenced manufacturer carries on the manufacture of or stores any excisable article;
- (b) enter and inspect at any time within the hours during which sale is permitted, and at any other time during which the same may be open, any place in which any excisable article is kept for sale by any person holding a licence under this Act;
- (c) examine any book, account or registers or examine, test, measure or weigh any materials, stills, utensils implements apparatus or excisable article found in such place; and
- (d) seize any measures, weights, or testing instruments which he has reason to believe to be false."

44. Power of certain officers to investigate into offences punishable under this Act.- (1) Any officer of the Excise Department not below such rank as the State Government may prescribe, may investigate into any offence punishable under this Act committed within the limits of the area in which such officer exercises jurisdiction.

(2) Any such officer may exercise the same powers in respect of such investigation as an if officer-in-charge of a police station may exercise in a cognizable case under the provisions of Chapter XII of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) and, if specially empowered in that behalf by the State Government, such officer may without reference to a Magistrate, and for reasons to be recorded by him in writing stop further proceedings, against any person concerned or supposed to be concerned in any offence punishable under this Act into which he has investigated."

"45. Power of arrest, seizure and detention.- Any officer of the Excise, Police, Salt, Customs Narcotics or Land Revenue Department, not below

such rank and subject to such restrictions as the State Government may prescribe, and any other person duly empowered in this behalf may arrest without warrant, any person found committing an offence punishable under this Act and may seize, and detain any excisable article or other article which he has reason to believe to be liable to confiscation under this Act or other law for the time being in force relating to excise revenue, and may detain and search any person upon whom and any vessel, raft, vehicle, animal, package, receptacle or covering in or upon which, he may have reasonable cause to suspect any such article to be."

"46. Power of Excise Commissioner or Magistrate to issue warrant for search or arrest.

- The Excise Commissioner or a Magistrate or an Excise Officer duly empowered in this behalf having reason to believe that an offence under this Act has been is being, or is likely to be, committed may -

(a) issue a warrant for the search of any place in which he has reason to believe that any excisable article or any utensil implement apparatus or materials, in respect of which such offence has been, is being or is likely to be committed are kept or concealed, and

(b) issue a warrant for the arrest of any person whom he has reason to believe to have been engaged in the commission of any such offence."

"47. Power of Excise Officer to search without warrant.-

(1) Whenever an officer of the Excise Department not below such rank as the State Government may prescribe has reason to believe that an offence punishable under this Act has been, is being or is likely to be committed in any place, and that search warrant cannot be obtained without affording the offender an opportunity of escape or of concealing evidence of the offence he may, at any time by day or night enter and search such place: -

Provided that such officer shall before entering such place record the grounds of his belief as aforesaid.

(2) Every Excise Officer as aforesaid may seize any thing found in such place which he has reason to believe to be liable to confiscation under this Act and may detain and search and if he thinks proper, arrest any person found in such place whom he has reason to believe to be guilty of such offence as aforesaid."

48. Procedure relating to arrest, searches etc.-

The provisions of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) relating to arrest, searches, search warrants, production of persons arrested and investigation into offences shall be held to be applicable so far as may be, to all action taken in these respects under this Act:

Provided that- (i) any offence punishable under this Act may be investigated into without the order of a Magistrate and any warrant issued by the Excise Commissioner or an Excise Officer duly empowered in this behalf under Section 46 may be executed by any officer selected for that purpose by the authority issuing the warrant;

(ii) whenever an excise officer makes any arrest, seizure or search he shall within 24 hours thereafter make a full report of all the particulars of the arrest, seizure or search to his immediate official superior, and shall, unless bail be accepted under Section 49 take or send the person arrested and the article seized with all convenient dispatch to a Magistrate for trial.

(iii) no search shall be deemed to be illegal by reason only of the fact that witnesses for the search were not inhabitants of the locality in which the place of search is situated.

*(iv) the provisions of Sec. 162 of the Code of Criminal Procedure, 1973" (Central Act No. 2 of 1974) shall not apply to the investigations made under this Act."

"50. Duty of officers of certain departments to report offences and to assist Excise Officers.-

Every officer of the Police, Salt, Customs Narcotics and Land Revenue Department shall be bound to give immediate information to an officer of the Excise Department of all breaches of any of the provisions of this Act which may come to his knowledge and to aid, any officer of the Excise Department in carrying out of the provisions of this Act upon request made by such officer."

"54. Penalty for unlawful import, export, transport, manufacture, possession etc. -

Whoever in contravention of this Act or of any rule or order made or of any licence, permit or pass granted, there under -

(a) imports, exports, transports, manufactures, collects, sells or possesses any excisable article; or
 (b) cultivates any hemp plant (*Cannabis sativa*); or
 (c) constructs or works any distillery, pot-still or brewery; or
 (d) uses, keeps or has in his possession any materials, stills, utensil, implements or apparatus whatsoever for the purpose of manufacturing any excisable article other than tari; or
 (e) removes any excisable article from any distillery, pot-still brewery or warehouse established or licensed under this Act; or
 (f) bottles any liquor for the purposes of sale; or
 (g) taps or draws tari from any tari producing tree;
shall be punishable with imprisonment for a term which shall not be less than **Six Month** but which may extend to **three years** and with fine of **twenty thousand** rupees or five times of the loss of excise duty, whichever is higher."

Provided that if the quantity of liquor found at the time or in the course of detection of the offence under clause (a) of this section exceeds fifty bulk litres, the person guilty for such offence shall be punishable with imprisonment for a term which shall not be less than **three years** but which may extend to **five years** and with fine of **twenty thousand** rupees or ten times of the loss of excise duty, whichever is higher."

"58. Penalty for certain acts by Licensee or his servants.- Whoever being the holder of a licence, permit or pass granted under this Act or being in the employ of such holder and acting on his behalf -

(a) fails to produce such licence, permit or pass on the demand of any Excise Officer or of any other officer duly empowered to make such demand; or
 (b) in any case not provided for in Section 54 willfully contravenes any rule made under Section 41 or Section 42; or
 (c) willfully does or omits to do anything in breach of any of the conditions of the licence, permit or pass not otherwise provided for in this Act :

shall be punished for each such offence with fine which may extend to **five hundred** rupees."

"61. Penalty for Excise Officer making vexatious search etc.- If any Excise Officer -

(a) without reasonable grounds of suspicion enters, inspects or searches or causes to be entered, inspected or searched any place; or
 (b) vexatiously and unnecessarily seizes any property of any person on the pretence of seizing or searching for any article liable to confiscation under this Act: or
 (c) vexatiously and unnecessarily detains, searches or arrests any person;
he shall be punished with imprisonment for a term which may extend to **three months** or with fine which may extend to **five hundred rupees** or with both.

"67(1)(a). Cognizance of Offences and credit of fines to Excise Department.-

(1) No Magistrate shall take cognizance of an offence punishable-

(a) under section 54 or section 54B or section 54D of section 57 or section 59 or section 62A or section 63 except on his own knowledge or suspicion or on a complaint or the report of the Excise Officer."

8. Having noticed the aforesaid provisions, this Court firstly examines whether the Police Could have proceeded with the raid and could have entered the premises of the factory having registered license and could have conducted the search and seizure and whether the Police Officer had the authority thereto?

9. As per Section 9 of the Act of 1950 (supra), the Excise Officers are appointed while Section 10(b) of the Act of 1950 provides that the State Government may, by an order, assign powers and duties available to the Excise Officer to any other Officer other than the Officer of the Excise Department or by any other person.

10. As has come on record, the State Government, vide notification dated 09/09/1961 authorized the Naib Tehsildar (Revenue) and above, to exercise the powers under Section 47 while Sub-Inspector of Police was authorized to exercise powers under Section 44, 47 and 67(1) (a) of the Act of 1950 except in

respect of retail licenses granted for sale of liquor under the Act.

The notification dated 09/09/1961 reads as under:-

"Notification NO. F1(52) E & T/61, dated 9.9.61, RGG (1) V-C dated 26.10.1961.

in exercise of the powers conferred by section 10 of the Rajasthan Excise Act, 1950 (Act No. 11 of 1950) and in supersession of this Department Notification No. F.49(1) SR/50, dated the 15th May 1951 published in the Rajasthan Gazette Vol. III pt.I of 1951 the State Government hereby orders that the officers of Police and Revenue Department not below the rank specified hereunder shall exercise the powers and perform the duties under the sections mentioned against them.-

- 1. Naib Tehsildar, Revenue and above Section 47*
- 2. Sub-Inspector of Police Sections 44, 47 and 67 (1)(a) of the retail licences granted for sale of liquor under the Act.*
- 3. All officer of Police and Revenue including Constables Chowkidars and Patwaris Section 45 except in respect of the retail licences granted for sale of liquor under the Act."*

11. From perusal of the aforesaid notification issued in 1961, this Court finds that the said notification has been issued with the purpose to empower the Police to take action under the Excise Act, however, in the opinion of this Court, the power given to the Police is not in addition to that of the Excise Officer but would be in the alternate. So say in other terms, empowering other Police Officials under Section 10B of the Act of 1950 could be exercised by the State only when there is no Excise Officer available or holding a post. If the Excise Act provides power to an Excise Officer under Section 44 of the Excise Act, he would be considered to be the specially empowered officer. Such powers cannot simultaneously be exercised by a Police Officer at the same time.

12. Similarly, the powers under Section 46, 47 and 48 of the Excise Act only relate to the Excise Officer while Section 45 of the

Excise Act allows any officer of the Police, Salt, Customs Narcotics or Land Revenue Department in addition to an Excise Officer to make arrest without warrant and seize and detail any excisable or any other article which he has reason to believe to be liable to confiscation under this Act or other law for the time being in force relating to exercise revenue, and may detail and search any person upon whom and any vessel, raft, vehicle, animal, package, receptacle or covering in or upon which he may have reasonable cause to suspect any such article to be.

13. The notification of 09/09/1961, thus has to be read in consonance with the provisions of the Excise Act of 1950 to mean that the powers under Section 45 can be exercised by all the officers including Constables, Revenue Officers, Salt Officers, Narcotic Officers, Custom Officers while power contained under Section 44, 47 and 67(1)(a) would be exercised by Sub Inspector of Police in absence of the Excise Officer.

14. In the present case, this Court finds that the Excise Officer was available on the spot. He has also registered an FIR. Thus, he was competent under the Excise Act to have taken action for offence under the Excise Act. A separate FIR registered by the Police under Section 14, 16, 19 and 54 of the Excise Act could not have been registered at the same time for the reasons as stated under.

15. In the opinion of this Court, two FIRs relating to a same case registered under different Sections would amount to abuse of process of law as it would result not only in two different investigations being conducted by two different agencies but also would be in violation of the basic principles laid down under the Act. The notification of 1961 also does not envisage for conferring

such a power empowering the Police Authorities. It would not only create chaos and confusion but also result in arbitrary exercise of power.

16. This Court notices that the Excise Inspector, who conducted search of the factory and registered FIR under Section 58-C of the Excise Act for violation of the license conditions, has not found the offences committed under Sections 14, 16, 19 read with Section 54 of the Excise Act.

17. In ***State of Haryana Vs. Bhajan Lal: 1992 Supp.(1) SCC 335***, the principles for quashing of FIR have been laid down which provide as under:-

"108. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers Under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima-facie constitute any offence or make out a case against the accused.

2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers Under Section 156(1) of the Code except under an order of a

Magistrate within the purview of Section 155(2) of the code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated Under Section 155(2) of the Code.

5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

18 In the light of the aforesaid principles, this Court now examines whether the allegations levelled in the FIR make out a case for registration of FIR under the various Sections as mentioned therein.

19. Section 14 of the Excise Act provides that no excisable article exceeding such quantity as the State Government may prescribe shall be imported, exported or transported. The factory was functioning and the work was going on of manufacturing

IMFL/Country Liquor at the factory premises, therefore, there is no requirement of a pass for transportation. It is only when the goods are transported out of the factory that pass is required within the meaning of Section 14 of the Excise Act.

20. Section 16 of the Excise Act provides for prohibition of excisable articles without license. As admittedly, there is a license available with the factory for IMFL as well as country liquor manufacturing, the offence under Section 16 of the Excise Act is, prima-facie, not made out. Merely mentioning that the factory does not have license, in-spite of the Excise Inspector mentioning of violation of conditions of license, amounts to abuse of power by the Police. A SHO is required to act with responsibility and has to be very careful in registering an FIR as a complainant. Once the SHO himself registers an FIR at the behest of his superior officers, contrary to the factual position by mentioning incorrect facts, this Court will have to exercise its inherent powers under Section 482 Cr.P.C. to quash such vexatious proceedings. Merely by stating that information has been received from an unknown informant, a Police Official cannot be allowed to enter into a legally licensed manufacturing unit and raid the premises and arrest the persons working there. A bottling plant, as informed by learned counsel for the petitioners, which has been manufacturing IMFL and Country Liquor since long at Bhiwadi, it cannot be expected that the local SHO would not be unknown about the bottling plant having regular license. It is beyond apprehension that the SHO would suddenly go to know at mid-night that the manufacturing of IMFL in an old continuing bottling plant was illegal and would enter the premises without even obtaining a search warrant and register a case under Section 14 and 16 of the Excise Act.

21. A look at Section 19 of the Excise Act shows that possession of excisable articles in excess of the quantity prescribed by the State Government can be only assessed by the concerned Excise Inspector who does not, even after inspection of the premises, mentions of offence under Section 19 of the Excise Act. Since the SHO, with the presumption that the bottling plant does not have license to manufacture IMFL, has included Section 19 of the Excise Act as an offence committed by the Company, such presumption, without even looking into the license, is an abuse of power exercised by the concerned SHO and his superior authorities.

22. This Court notices that while the FIR registered by the Police mentions of the Bottling Company not having license, the FIR registered by the Excise Officer mentions of the Company having both the licenses. In reply to the present criminal misc. petitions, the Police investigation has also not denied this fact of the Company having licenses of IMFL as well as Country Liquor. Thus, no offence under Section 14, 16 or 19 of the Excise Act can be said to be made out.

23. A look at Section 43 of the Excise Act shows that the Excise Commissioner or the Excise Officer would alone have the power to enter and inspect place of manufacture and sale while the arrest, seizure and confiscation relating to excisable articles found with any person or individual in any vessel, raft, vehicle, animal, package, receptacle or covering can be made by the Police under Section 45 apart from the Officer of the Excise, Salt, Customs, Narcotics or Land Revenue Department. The two powers available under Sections 43 and 45 are distinguishable as one is for the place of manufacturing and sell and the other is for the purpose of

excisable material available with the person or any other building, mode of transport etc.

24. As concluded above, the power to enter and inspect the place of manufacture by the Police Personnel would be unavailable if there is already an Excise Inspector or Excise Officer available at the site. Of-course, the Police Officials may assist the concerned Excise Officer while he is exercising his powers under the various provisions as noticed above and also carry out any aid or assistance of actions as the Excise Officer may do it himself like arresting, investigating etc. in the presence of the Excise Officer.

25. However, in the present case, this Court finds that the Police has illegally and unauthorizedly entered the premises of a manufacturing unit of IMFL and country liquor which had its due license. It not only entered illegally but carried out illegal search and registered an FIR mentioning that the bottling plant was not having a license for manufacturing IMFL, illegally and contrary to the record. If such powers are allowed to be exercised by the Police Authorities, it would lead to havoc in the society. Such registration of FIR is found to be vexatious, illegal, autocratic and arbitrary exercise of powers by the Police. The Police in the presence of the Excise Officer had no authority to register the FIR separately.

26. Section 61 of the Excise Act provides for taking action against an Excise Officer who conducts vexatious search. In the present case, the Police Officials have conducted a vexatious search. Appropriate proceedings, therefore, are required to be conducted against them under Section 61 of the Excise Act by the concerned Magistrate having jurisdiction for which he shall pass necessary orders as per the observations made herein above.

27. This Court notices that in the FIR, the Police has also registered a case under Section 308 IPC. Section 308 IPC reads as under:-

308. Attempt to commit culpable homicide

Whoever does any act with such intention or knowledge and under such circumstances that, if he by that act caused death, he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Illustration

A, on grave and sudden provocation, fires a pistol at Z, under such circumstances that if he there by caused death he would be guilty of culpable homicide not amounting to murder. A has committed the offence defined in this section.

Thus, the presence of an intention or knowledge that the act would cause death is essential for bringing home the provisions of Section 308 IPC.

Thus, taking into consideration the aforesaid, this Court finds that no such contents are mentioned in the FIR. No person has been harmed nor the liquor had been sold. The cartoons were lying in the premises. There is no mention in the FIR registered by the Police that any person was harmed or injured on account of non-mentioning of the warning on the cartoons. The manufacturing process was on. The packaging was not complete. There is no allegation of spurious liquor. Non-mentioning of health warning would fall within the meaning of the notification issued under the Food Safety and Standards Act, 2006 and violation

thereto. There is no penalty provided. As pointed out by learned counsel for the petitioners, Section 58 of the Excise Act provides that where no specific penalty was provided for contravention of any provision of the Act, Rules or Regulations, the penalty may be imposed to the extent of Rs. Two Lac.

28. In the opinion of this Court, therefore, the FIR registered under Section 308 IPC from the facts as mentioned in the FIR itself is not made out.

29. It is also mentioned that Section 420 IPC was later on added by the investigating authorities. Learned counsel for the petitioners has submitted that from the facts as contained in the FIR or even from investigation, Section 420 IPC provisions are ex-facie not made out. The allegation of the Police relating to the Engine Number of the vehicle parked in the premises not matching with the license plate of two trucks would not constitute offence under Section 420 IPC. The bottling company plant is not owner of the trucks and the trucks owners have put up their claim on the basis of their registration certificate. Mere non-mentioning of labels on the cartoons would not bring the case under Section 420 IPC.

30. In ***Harmanpreet Singh Ahluwalia & Ors. Vs. State of Punjab & Ors.: (2009) 7 SCC 712***, the Apex Court held as under:-

"25. An offence of cheating cannot be said to have been made out unless the following ingredients are satisfied:

(i) deception of a person either by making a false or misleading representation or by other action or omission;

(ii) fraudulently or dishonestly inducing any person to deliver any property; or

(iii) To consent that any person shall retain any property and finally intentionally inducing that person

to do or omit to do anything which he would not do or omit.

For the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 of the Indian Penal Code can be said to have been made out. We may reiterate that one of the ingredients of cheating as defined in Section 415 of the Indian Penal Code is existence of an intention of making initial promise or existence thereof from the very beginning of formation of contract."

31. From perusal of the aforesaid facts which have come on record, this Court does not find the ingredients of cheating in the allegations against the petitioners and therefore, the registration of case under Section 420 IPC is not found to be made out. On presumption that a particular good or a particular vehicle would be used for smuggling and cheating, while the vehicle and goods are lying in the factory, would be a too far fetched attempt to bring home against a Company or its Director, shareholders etc. The respondents, having been faced with such submissions in the written submissions, have then resorted to argument that the power under Section 482 Cr.P.C. ought not be exercised as they are to be exercised sparingly and with due caution and circumspection. This Court agrees with the respondents that the power under Section 482 Cr.P.C. have to be sparingly exercised as held in ***State of Haryana Vs. Bhajan Lal: 1992 Supp.(1) SCC 335; N. Soundaram Vs. P.K. Pounraj & Anr.: (2014) 10 SCC 616; State of H.P. Vs. Pirthi Chand & Anr.: (1996)2 SCC 37; Union of India Vs. Prakash P. Hinduja & Anr.: (2003) 6 SCC 195; State of Karnataka Vs. Pastor P. Raju: (2006) 6 SCC***

728; Vinod Raghuvanshi Vs. Ajay Arora: (2013) 10 SCC 581 and K. Narayana & Ors. Vs. The State of UP: 1997 SCC On-line 215.

Law in this regard is settled. However, each case has to be examined on its own facts. The Court has to be conscious of its powers as well as its duties as a sentinel of justice; and the Constitutional right to engage in business and after having due license, from the State Authorities, no person should be allowed to harass a law abiding citizen. The view taken by the Supreme Court in aforesaid judgments, does not anywhere mean that the power under Section 482 Cr.P.C is not to be exercised at all. If glaring facts like the present one are brought before the Court, it cannot but help itself to disallow such proceedings to continue as not exercising one's power where required, also amounts to abuse of power. In other words, if the Court fails to exercise its power, where it is required to exercise it, would amount to causing injustice. With a view to have further information, this Court asked the respondents to bring the case diary and the investigation conducted. Following aspects have come from perusal thereto.

32. The Additional Commissioner (Excise), Zone Jaipur prepared a 'Panchnama' on 15/10/2020. The license dated 21/01/1997 of IMFL renewed upto 31/03/2021 is available in the case diary. The license dated 21/01/1997 was working of IMFL in India under Franchise Arrangement upto 31/03/2021. Mr. Jitendra Singh Verma was appointed as Inspector (Excise) and Incharge of M/s. Golden Bottling Plant, Bhiwadi.

33. This Court has perused the case diary as well as Whatsapp Chatting, CDR & CAF diary which was handed over to the Court

and from perusal of the same, this Court is satisfied that the entire initiatives taken by the Bhiwadi Police is a vexatious investigation conducted without there being any basis or any allegation of there not being a license of IMFL and Country Liquor. The FIR has been chalked by the SHO after conducting the raid. From the case diary, the original license of the Bottling Plant from 1996-97 onwards to manufacture and sell IMFL is found to be in possession of the Police and the license has been renewed continuously upto 31/03/2021.

34. In such a background, the FIR registered by the SHO alleging that the factory was manufacturing IMFL without license, selling IMFL and was engaged in smuggling illicit liquor is factually incorrect.

35. The evidence of the allegations of the petitioners on the Police of the raid being conducted with the purpose to help the local liquor cartels and support illicit liquor are not available. However, the manner in which the Police conducted the raid and has closed down the factory and arrested persons from Delhi hurriedly shows that there is some extraneous reason but no such document is available on record and therefore, the matter relating to the said aspect is left to rest as it is.

36 An abuse of Police powers for extraneous purposes and considerations defies rule of law. No person in police force can be allowed to abuse his powers for raiding a firm with a purpose of creating a culpable case against its owners. As noticed, the Police had no powers available as there was a Specialized Officer namely; Excise Officer who alone could have entered and inspected the premises.

37. In **Delhi Administration Vs. Ram Singh: AIR 1962 (SC) 63**, as relied upon by learned counsel for the petitioners, the Apex Court held as under:-

"22. If the power of the special police officer to deal with the offences under the Act, and therefore to investigate into the offences, be not held exclusive, there can be then two investigations carried on by two different agencies, one by the special police officer and the other by the ordinary police. It is easy to imagine the difficulties which such duplication of proceedings can lead to. There is nothing in the Act to co-ordinate the activities of the regular police with respect to cognizable offences under the Act and those of the special police officer.

23. The special police officer is a police officer and is always of the rank higher than a Sub-Inspector and therefore, in view of s. 551 of the Code, can exercise the same powers throughout the local area to which he is appointed as may be exercised by the officer in charge of a police station within the limits of his station."

38. This Court also finds that once an FIR has been lodged under Section 58-C of the Excise Act by the Excise Inspector, a separate FIR by the Police could not have been registered for offences which were found to be not made out by the Excise Inspector. The decision whether the offence is made out or not has to be left to the Specialised Officer. The FIR registered by the Police was therefore, not warranted.

39. In **Dr. Subramanian Swamy Vs. Jayalalitha: 1997 Cri. LJ 2481**, as relied on by learned counsel for the petitioners, the

Apex Court observed as under:-

"35. One cannot comprehend that with regard to the commission of any offence, there can be any parallel investigation by two independent agencies either by the Court or the other. Particularly, crime detection in the name of investigation is totally distinct and different from the concept of crime punishment. If two parallel investigation is ordered, then, it has to face its consequences. Therefore, parallel investigation is alien

to the recognised proposition of law but the matter here is not akin to the parallel investigation. What Section 210, Cr.P.C. provides is that when in a case instituted otherwise than on a police report, it is made to appear to the Magistrate during the course of inquiry or trial held by him that an investigation by the police is in progress in relation to the same subject matter, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the Police Officer conducting the investigation."

40. Similarly, in ***Karam Singh Vs. State of Punjab:ILR 1988 (1) 212***, as relied upon by learned counsel for the petitioners,

The Punjab & Harayana High Court has observed as under:-

".....It hardly need be emphasised that if the power of the special or authorised police officer to deal with the offences under the Act and therefore to investigate - which essentially includes the power to arrest the suspected offender - into the offences, be not held exclusive to the officers specified in Sections 41 to 43 of the Act, there can be two investigations carried on by two different agencies, one under the Act and the other by the ordinary police. It is easy to imagine the difficulties which such duplication of proceedings can lead to. There is nothing in the Act to coordinate the activities of the regular police with respect to cognizable offences under the Act and those of the specially empowered or authorised police officers."

41. In ***Union of India Vs. Ashok Kumar Sharma: 2020 SCC Online SC 683 (Criminal Appeal No.200 of 2020, decided on 28/08/2020)***, as relied upon by learned counsel for the petitioners, the Apex Court was examining the following question:-

"1. What is the interplay between the provisions of the Code of Criminal Procedure (hereinafter referred to as "CrPC" for short) and the Drugs and [Cosmetics Act](#), 1940 (hereinafter referred to as "the Act" for short)? Whether in respect of offences falling under chapter IV of the Act, a FIR can be registered under Section 154 of the CrPC and the case investigated or whether Section 32 of the Act supplants the procedure for investigation of offences under CrPC and the taking of

cognizance of an offence under Section 190 of the CrPC? Still further, can the Inspector under the Act, arrest a person in connection with an offence under Chapter IV of the Act."

In the said case, after analyzing both the provisions of law, the Supreme Court held as under:-

"44. A perusal of the same would indicate the role which is assigned to any person and recognized consumer association within the meaning of Section 32. Section 26 of the Drugs and Cosmetics Act, 1940 declares that on the application, any person or any recognized consumer association, in the prescribed manner and on payment of prescribed fee, is entitled to submit for test or analysis, to a Government Analyst any drug or cosmetic purchased by the person or the association and to receive a report of such test or analysis signed by the Government Analyst. There can be no gainsaying that armed with a report which reveals the commission of an offence under Chapter IV of the Act, they can invoke Section 32 and prosecute the offender.

45 Section 32 of the Act undoubtedly provides for taking cognizance of the offence by the court only at the instance of the four categories mentioned therein. They are: (a) Inspector under the Act; (b) Any Gazetted Officer empowered by the Central or the State Government; (c) Aggrieved person; and (d) Voluntary Association. It is clear that the Legislature has not included the Police Officer as a person who can move the court. Before the matter reaches the court, under Section 190 of the CrPC, ordinarily starting with the lodging of the first information report leading to the registration of the first information report, investigation is carried out culminating in a report under Section 173. The Police Report, in fact, is the Report submitted under Section 173 of the CrPC to the court. Under Section 190 of the CrPC, the court may take cognizance on the basis of the police report. Such a procedure is alien to Section 32 of the Act. In other words, it is not open to the Police Officer to submit a report under Section 173 of the CrPC in regard to an offence under Chapter IV of the Act under Section 32. In regard to offences contemplated under Section 32(3), the Police Officer may have power as per the concerned provisions. Being a special enactment, the manner of dealing with the offences

under the Act, would be governed by the provisions of the Act. It is to be noted that Section 32 declares that no court inferior to the Court of Sessions shall try offence punishable under Chapter IV. We have noticed that under Section 193 of the CrPC, no Court of Sessions can take cognizance of any offence as a Court of Original Jurisdiction unless the case has been committed to it by a Magistrate under the CrPC. This is, undoubtedly, subject to the law providing expressly that that Court of Sessions may take cognizance of any offence as the Court of Original Jurisdiction. There is no provision in the Act which expressly authorises the special court which is the Court of Sessions to take cognizance of the offence under Chapter IV. This means that the provisions of Chapters XV and XVI of the CrPC must be followed in regard to even offences falling under Chapter IV of the Act. Starting with Section 200 of the Act dealing with taking of cognizance by a Magistrate on a complaint, including examination of the witnesses produced by the complainant, the dismissal of an unworthy complaint under Section 203 and following the procedure under Section 202 in the case of postponement of issue of process are all steps to be followed. It is true that when the complaint under Section 32 is filed either by the Inspector or by the Authorised Gazetted Officer being public servants under Section 200, the Magistrate is exempted from examining the complainant and witnesses".

In the said case, while holding as above, the Apex Court concluded as under:-

162. Thus, we may cull out our conclusions/directions as follows:

I. In regard to cognizable offences under Chapter IV of the Act, in view of Section 32 of the Act and also the scheme of the CrPC, the Police Officer cannot prosecute offenders in regard to such offences. Only the persons mentioned in Section 32 are entitled to do the same.

II. There is no bar to the Police Officer, however, to investigate and prosecute the person where he has committed an offence, as stated under Section 32(3) of the Act, i.e., if he has committed any cognizable offence under any other law.

III. Having regard to the scheme of the CrPC and also the mandate of Section 32 of the Act and on a conspectus of powers which are available with the

Drugs Inspector under the Act and also his duties, a Police Officer cannot register a FIR under Section 154 of the CrPC, in regard to cognizable offences under Chapter IV of the Act and he cannot investigate such offences under the provisions of the CrPC.

IV. Having regard to the provisions of Section 22(1)(d) of the Act, we hold that an arrest can be made by the Drugs Inspector in regard to cognizable offences falling under Chapter IV of the Act without any warrant and otherwise treating it as a cognizable offence. He is, however, bound by the law as laid down in D.K. Basu (supra) and to follow the provisions of CrPC.

V. It would appear that on the understanding that the Police Officer can register a FIR, there are many cases where FIRs have been registered in regard to cognizable offences falling under Chapter IV of the Act. We find substance in the stand taken by learned Amicus Curiae and direct that they should be made over to the Drugs Inspectors, if not already made over, and it is for the Drugs Inspector to take action on the same in accordance with the law. We must record that we are resorting to our power under Article 142 of the Constitution of India in this regard.

VI. Further, we would be inclined to believe that in a number of cases on the understanding of the law relating to the power of arrest as, in fact, evidenced by the facts of the present case, police officers would have made arrests in regard to offences under Chapter IV of the Act. Therefore, in regard to the power of arrest, we make it clear that our decision that Police Officers do not have power to arrest in respect of cognizable offences under Chapter IV of the Act, will operate with effect from the date of this Judgment.

VII. We further direct that the Drugs Inspectors, who carry out the arrest, must not only report the arrests, as provided in Section 58 of the CrPC, but also immediately report the arrests to their superior Officers."

42. Thus, in the opinion of this Court and in view of the provisions as noticed above, the investigation and the power to enter the factory premises of Golden Bottling Company was solely available with the Excise Officer who could have taken assistance of the local Police for the purpose of carrying investigation in terms of Section 43 of the Excise Act. In a case where there is

specialized agency provided under the Excise Act, no other person can be allowed to erode or usurp such power available with the Excise Department.

43. From perusal of the case diary, it is seen that the Additional Commissioner (Excise) has prepared a 'Panchnama' separately on 15/10/2020 which shows that the Specialized Officer of the Excise Department was very much having the power to prepare the 'Panchnama' and the local Police was not empowered to conduct the investigation by registering an FIR.

44. The proceedings initiated by the Police Officials is liable to be struck down and the Police Officer's investigation is found to be dubious and appears to be vitiated and motivated on the basis of extraneous considerations. This Court would not make further observations in this regard but suffice it to state that the Superintendent of Police, Alwar has failed to play a proper role and has wrongfully allowed his officials to enter into the premises of the Bottling Plant to search whether any offence is being committed there.

45. Another argument raised by learned Additional Advocate General is that the provisions of Cr.P.C. would have an overriding effect, however, the issue is no more res-integra. The question whether provisions of the Excise Act will prevail over the general provisions of Cr.P.C. was examined by the Division Bench of this Court in **Gurucharan Singh Vs. State of Rajasthan: (2001) 3 WLC 575** and it was held that the provisions of law namely- Rajasthan Excise Act prescribing period of limitation will prevail as against Section 468 Cr.P.C..

46. Similar view has been taken by the Supreme Court while dismissing SLP in the case of **Shadab Abdul Saikh Vs. Gagan**

Harsh Sharma & Ors. (SLP No.10264-10265/2018, decided on 07/12/2018).

47. In **K.L. Subbayya Vs. State of Karnataka: (1979) 2 SCC**

115, the Apex Court held as under:-

"4. This, therefore, renders the entire search without jurisdiction and as a logical corollary, vitiates the conviction. We feel that both Sections 53 and 54 contain valuable safeguards for the liberty of the citizen in order to protect them from ill-founded or frivolous prosecution or harassment. The point was taken before the High Court which appears to have brushed aside this legal lacuna without making any real attempt to analyse the effect of the provisions of Section 53 and 54. The High Court observed that these two sections were wholly irrelevant. With due respect, we are unable to approve of such a cryptic approach to a legal question which is of far reaching consequences. It was, however, suggested that the word "place" would not include the car, but the definition of the word "place" under the Act clearly includes vehicle which would include a car. Thus the ground on which the argument of the petitioner has been rejected by the High Court cannot be sustained by us. We are satisfied that there has been a direct non-compliance of the provisions of Section 54 which renders the search completely without jurisdiction. In this view of the matter, the appeal is allowed, the conviction and sentence passed on the appellant is set aside and he is acquitted of the charges framed against him."

48. In **Roy V.D. Vs. State of Kerala: (2000) 8 SCC 590**, the

Apex Court held as under:-

"15. It is thus seen that for exercising powers enumerated under Sub-section (1) of Section 42 at any time whether by day or by night a warrant of arrest or search issued by a Metropolitan Magistrate or a Magistrate of the first class or any Magistrate of the second class who has been specially empowered by the State Government in that behalf or an authorization under Sub-section (2) of Section 41 by an empowered officer is necessary. Without such a warrant or an authorisation, an empowered officer can exercise those powers only between sunrise and sunset. However, the proviso permits such an

empowered or authorised officer exercise the said powers at any time between sunset and sunrise if he has reason to believe that such a search warrant or authorization cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender and he records the grounds of his belief.

16. Now, it is plain that no officer other than an empowered officer can resort to Section 41(2) or exercise powers under Section 42(1) of the Narcotic Drugs & Psychotropic Substances Act or make a complaint under Clause (d) of Sub-section (1) of Section 36A of the Narcotic Drugs & Psychotropic Substances Act. It follows that any collection of material, detention or arrest of a person or search of a building or conveyance or seizure effected by an officer not being an empowered officer or an authorised officer under Section 41(2) of the Narcotic Drugs & Psychotropic Substances Act, lacks sanction of law and is inherently illegal and as such the same cannot form the basis of a proceeding in respect of offences under Chapter IV of the Narcotic Drugs & Psychotropic Substances Act and use of such a material by the prosecution vitiates the trial.

18. It is well settled that the power under Section 482 of the Cr. P.C. has to be exercised by the High Court, inter alia, to prevent the abuse of the process of any court or otherwise to secure the ends of justice. Where criminal proceedings are initiated based on illicit material collected on search and arrest which are per se illegal and vitiate not only a conviction and sentence based on such material but also the trial itself, the proceedings cannot be allowed to go on as it cannot but amount to abuse of the process of the court; in such a case not quashing the proceedings would perpetuate abuse of the process of the court resulting in great hardship and injustice to the accused. In our opinion, exercise of power under Section 482 of the Cr. P.C. to quash proceedings in a case like the one on hand, would indeed secure the ends of justice."

49. As the investigation has been held to be without jurisdiction, the search and seizure of articles and the factory premises by the Police is held to be vitiated.

50. From the foregoing discussions and the findings arrived at, this Court concludes as under:-

(i) The investigation, seizure and entry in the factory premises by the concerned local SHO Jitendra Solanki, Police Station Bhiwadi was without authority and he has abused his powers available under the Police Act. He Could not have acted like an Excise Inspector, moreso, when the Excise Officer was available, under the Excise Act, the Police has to act in assistance of the Excise Officer as well as in alternate to the Excise Officer, however, it cannot be vice-versa namely; the Police cannot first raid the premise of the manufacturing unit and thereafter call the Excise Officer for its help. In the present case, the Excise Officer must have apprised the SHO of the issuing of license to the Company but in-spite thereof, the SHO registered FIR mentioning that the Company does not have IMFL license although the license of IMFL duly renewed from time to time upto March, 2021 is available on record in the case diary.

(ii) The arrest conduct is clearly illegal. No notice under Section 41 Cr.P.C. was served on the petitioners before arresting them.

(iii) The overzealous attempt of the SHO supported by his superior officers, is found to be illegal and such exercise of power by the Police officials is found to be an action of harassment, atrocity and is a case of Police atrocity for which the petitioners would be free to take up appropriate remedy in law.

(iv) That apart, the Director General of Police, Rajasthan, Police Headquarters, Jaipur shall also take appropriate departmental action against all the Police officials involved in the matter as the entire exercise conducted is found to be vexatious

and based on a false FIR registered by the SHO himself without there being any complaint from any quarter.

(v) The FIR No.615/2020 registered by the SHO, Police Station, Bhiwadi dated 12/10/2020 is hereby quashed & set aside with all consequential benefits and any further proceedings initiated against the petitioners in the name of investigation by the Police are also quashed as this Court would not allow the abuse of power by the Police to be perpetuated.

(vi) The Police Authorities shall pay a cost of Rs.10,00,000/- (Rs. Ten Lac) to the Company for seizing and closing down the Company and not allowing the Company to do its business since October, 2020.

51. All these criminal misc. petitions are accordingly allowed.

(SANJEEV PRAKASH SHARMA),J

Raghu

