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**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

**BEFORE
HON'BLE SHRI JUSTICE SANJAY DWIVEDI**

ON THE 30th OF OCTOBER, 2023

WRIT PETITION No. 19198 of 2023

BETWEEN:-

1. **RAJINDER SINGH RAJPUT** [REDACTED]
2. **SOHIT ANAND** [REDACTED]
3. **RAHUL TIWARI** [REDACTED]
4. **AKSHAT KUMAR** [REDACTED]
5. **PRANIT NAGRATH** [REDACTED]
6. **ARPIT AGRAWAL** [REDACTED]
7. **ANUJ AWASTHI** [REDACTED]
8. **RAHUL KHARE** [REDACTED]

9. **ROHIT KHARE** [REDACTED]

10. **AKASH NARANG** [REDACTED]

.....PETITIONER

*(BY SHRI SANJAY AGRAWAL - SENIOR ADVOCATE WITH SHRI ANUJ
AGRAWAL - ADVOCATE)*

AND

1. **THE STATE OF M.P. THR PS GORAKHPUR
JABALPUR (MADHYA PRADESH)**

2. **SHRI SHAIVAL NAIK** [REDACTED]

.....RESPONDENTS

(BY SHRI PUNIT SHROTI - GOVERNMENT ADVOCATE)

Reserved on : 31/08/2023

Delivered on : 30/10/2023

*This petition having been heard and reserved for orders, coming on for
pronouncement this day, the Court pronounced the following:*

ORDER

Pleadings are complete.

With the consent of parties, matter is heard finally.

This petition is filed under Article 226 of Constitution of India seeking quashment of challan dated 29/03/2023 (Annexure-P-1) submitted in Crime No.908/2022 against the present petitioners registering the case under Section 34(1), 36(B), 36(C) of M.P.Excise Act, 1915 and under Section 7/15 of

Madhya Pradesh Kolahal Niyantran Adhiniam, 1985 and Section 177 of IPC.

2. Counsel for the petitioners has submitted that if the allegations made and contents of FIR are considered to be true at its face value even then the offence registered against the petitioner is not made out and as such the said crime and charge-sheet submitted thereof is liable to be quashed.

3. As per prosecution, on 27/12/2022 the Station House Officer of Gorakhpur Police Station received an information that near Bhasin Arcade somebody is playing extremely loud music, causing disturbances for the local residents. The informant has also informed the Station House Officer that his father is not well and due to the loud music it is difficult for him to sleep. The police team thereafter reached the spot and entered into the flat situated on the third floor of the mentioned apartment wherein they found that a group of young boys and girls were playing music on a high-pitched DJ system. Several bottles of liquor were also found there which made it evident that young boys and girls were consuming alcohol together. During the police inquiry, the boy who was hosting the party introduced himself as a permanent resident of Adhartal, Jabalpur. When the police asked whether any permission had been obtained for hosting the party and playing DJ at such a high volume, he had no answer. Although, some of the youngsters managed escape, the police arrested many of them and get them medically examined. They were found to be under alcoholic intoxication. Consequently, offence was registered under Section 334(1), 36(B), 36(C) of M.P.Excise Act, 1915 and under Section 7/15 of Madhya Pradesh Kolahal Niyantran Adhiniam, 1985.

4. The petitioners' counsel argues that from contents of FIR and seizure made by the police from the spot, it is evident that no offence is made out against the petitioners. The counsel asserts that it was a private party

hosted at a personal flat, and the music was being played within the permissible frequency range. From the charge-sheet also it is not clear as to how an offence under Section 7/15 of Madhya Pradesh Kolahal Niyantran Adhiniam, 1985 is made out. He submits that in total, 2 to 3 used liquor bottles were seized from the place, wherein 1/2 bottle of liquor of brand of Bombay Suffire and empty bottle of Monkey Shoulder whisky were there. The petitioners' counsel argues that organizing a party in a private flat where liquor is being consumed is not an offence, merely because another resident of the same apartment had some personal grudges with the owner of the flat made a false complaint to the police just to cause mental harassment. The counsel emphasizes that the police cannot register an offence without concrete evidence or material. He further argues that there is no allegation that there was any violation of provision of sub Section 1 of Section 34 of Excise Act. The prosecution has failed to establish a case wherein the petitioners were involved in the manufacturing, transporting, importing, exporting, or possessing intoxicants. It is evident from the items seized and the details provided in the challan that only few used liquor bottles were seized by the police, which does not constitute an offence falling within the scope of Section 34(1) of the Excise Act. As per the material produced by the prosecution no offence is established under Section 36(b) and 36(c) of Excise Act because all the accused had gathered at a private residence, which is owned by one of the petitioners. He submits that when Section 34 is not made out the offence of Section 34(c) of Excise Act is also not made out. From the contents of FIR it can easily be gathered that offence of Section 177 is not made out. Like wise it is not clear as to how offence under Section 7/15 of Madhya Pradesh Kolahal Niyantran Adhiniam, 1985 is made out.

36-B. Penalty for being drunk or for purpose of drinking in a common drinking-house—Whoever, in contravention of this Act or rule or notification or any order made, issued or given thereunder, or of any licence, permit or pass granted under this Act, is found drunk or drinking in a common drinking house or is found there present for the purpose of drinking shall be punishable with fine which may extend to one thousand rupees and any person found in a common drinking-house during any drinking therein shall be presumed until the contrary is proved, to have been there for the purpose of drinking.

36-C. Penalty for permitting a place to be used for the commission by other person of any offence punishable under Section 34, Section 35, Section 36 or Section 36-A—Whoever, being the owner or occupier or having the use or care or management or control of any place, knowingly permits it to be used for the commission by any other person of any offence punishable under Section 34, Section 35, Section 36 or Section 36 -A shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than two hundred rupees but which may extend to two thousand rupees or with both.

5. The counsel for petitioners vigorously has argued that playing DJ in a private residence should not be considered as an offence unless it violates Section 5 of Madhya Pradesh Kolahal Niyam, 1985. There is no definite evidence to prove that music was being played at a high volume, merely because a complaint was made offence is not made out. It is the responsibility of the prosecution to establish that the sound volume exceeded the permissible limits. He strenuously argued that music was also not being played in a public place. He further argued that all the petitioners are well educated and reputed person of the town and they belong to good families. He submits that petitioners were enjoying a party with care and caution in a private house and police have registered the offence despite the absence of any material or concrete evidence. He submits that present case is a glaring example of misuse of power. If such type of practice is allowed to persist, it would become difficult for a respectable person to arrange any party in his house. He asserts that from over all material of the charge sheet and offence for which petitioners

have been charged it is clear that not only FIR but the charge sheet are liable to be set-aside.

6. The State's counsel has examined the case diary and put forth that as per the material available in the case diary the police has rightly and appropriately registered the offence. If any person in the apartment was facing inconvenience because of the said party organized by the petitioners then police is under obligation to take action against the people causing nuisance and disturbance. He submits that the charges shall be proved during the trial but it would not be appropriate to intervene in the matter at this stage.

7. In response, counsel for the petitioners has contended that the police team had the option to cease the party if it was causing any inconvenience to other residents of the apartment but registration of offence is something different. He stressed on the fact that the registration of an offence and subsequent trial would significantly affect the future career of the petitioners and if registration of offence is continued, the same would cause prejudice to them and can also ruin their future.

8. After considering the submissions put forth by both the counsels and reviewing the available records, I am of the opinion that there is no concrete evidence and material on record to constitute any offence against the present petitioners. Now a days it is very common that youngsters organize get together and parties in a place where they could assemble and no restriction can be imposed upon them. It is indisputable that the party was going on in a flat owned by one of the petitioners, and the mere consumption of liquor cannot be deemed to be an offence.

9. The law laid down by the Supreme Court and yard stick for quashing the FIR are determined in case of State of **Haryana & others Vs.**

Bhajan Lal & others, reported in (1992) Supp (1) SCC 335. The Supreme Court has formulated guidelines as to under what circumstances FIR can be quashed exercising power provided under section 482 of Cr.P.C and Article 226 of Constitution of India as under:-

"102. 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 extraordinary 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 FIR 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 FIR 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 Act concerned (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 Act concerned, providing efficacious redress for the grievance of

the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with malafide 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."

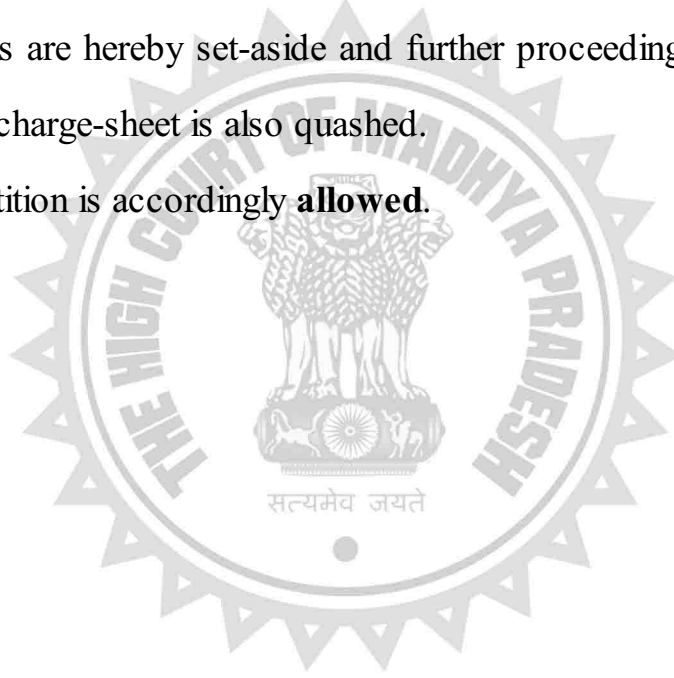
10. In view of the guidelines no.1 and 2 formulated by the Supreme Court in case of **Bhajanlal** (supra) the FIR or complaint can be quashed.

11. Thus, in view of the discussion made hereinabove, it is clear that as per the material collected by the prosecution and submitted along with the charge-sheet no offence is made out against the present petitioners.

12. Under such a circumstance, Crime No.908/2022 registered against the petitioners are hereby set-aside and further proceeding initiated on the basis of FIR and charge-sheet is also quashed.

Petition is accordingly **allowed**.

sushma



(SANJAY DWIVEDI)
JUDGE