dacoity, even then it is to be handed over to the concerned person after drawing detailed and proper panchnama of such articles and taking photographs of such articles and on accepting bond from the person that such articles would be produced, if required, at the time of trial and against proper security. It is observed that such article is to be handed over to the complainant, the fact remains that it was situation in that case where muddamal is required to be handed over to the complainant; otherwise ratio of the case as confirmed in para 11 of the decision, would be applicable to the present case also.

5. In view of the above, revision application is allowed, whereby muddamal article lying with the trial Court shall be returned to the present petitioner on following conditions :

I The petitioner shall furnish bond/ security of Rs.1,00,000/- [Rupees one lac only] before the trial Court with an undertaking that as and when and if so required, he will produce the muddamal article before the trial Court.

II The trial Court shall hand over muddamal article after drawing detailed panchnama and taking photographs as confirmed in the judgment of Sunderbhai Ambalal Desai [supra].

Revision application is allowed accordingly. Rule is made absolute to the aforesaid extent.

***Result*:-** Revision application allowed.

ABC 2016 (II) 422 GUJ
ACQUITTAL & BAIL CASES
HIGH COURT OF GUJARAT

(S.G. Shah, J.)

Criminal Revision Application No. 446 of 2007
Decided on 22 September, 2016

KISHENBHAI MOHANBHAI DODIA(DODEJA) ***- Appellant(s).***

Versus

STATE OF GUJARAT ***- Respondent(s).***

Law Covered*:-** ***Bombay Prohibition Act —Section 67(1)A(1) —Mumbai Spirituous Preparations [Interstate Trade And Commerce] Control Act, 1957— Sealed bottles of UD Cologne —Recovery of — Held, only because of disclosing the percentage of alcohol on a sealed

bottle/packet — & only because of total number of packets/bottles for the purpose of selling in course of routine business— it cannot be said that the person in possession of such material is either dealing with or storing alcoholic substance as prohibited under the Bombay Prohibition Act— Conviction set aside. (Para 4)

Facts:- *The applicant was sentence for six months and a fine of `500/- by trial Court u/s.67(1)A(1) of the Bombay Prohibition Act for keeping UD cologne. The Session Court modified the sentence to till rising of the Court (TRC), the fine imposed by the trial Court was maintained. The applicant challenged the said order in the present Revision Application, contending that in fact, the material, which was found from him being UD Cologne, can never be termed as a contraband material and therefore, he cannot be punished. It was observed by the Hon'ble High Court that only because of disclosing the percentage of alcohol on a sealed bottle/packet and only because of total number of packets/bottles for the purpose of selling in course of routine business, it cannot be said that the person in possession of such material is either dealing with or storing alcoholic substance as prohibited under the Bombay Prohibition Act. The application was allowed.*

Law of relief:- ***It cannot be said that the person in possession of any material containing some percentage of alcohol is either dealing with or storing alcoholic substance as prohibited under the Bombay Prohibition Act.***

Held:- The perusal of order by the trial Court, which has conducted the matter summarily, makes it clear that the substance, which was recovered from the Aradhana Novelty Stores of the applicant, is nothing, but a sealed bottle of UD Cologne, which is generally used for personal use as a cosmetic item and only because of some negligible percentage of spirit or alcohol in such final product, it cannot be said that because of n number of bottles stored in the Novelty Store for business purpose, the applicant has consumed or dealt with the alcoholic substance, which is otherwise prohibited under the Bombay Prohibition Act. It cannot be ignored that in sanitizers and wipes also, limited percentage of alcohol exists, but only because of disclosing the percentage of alcohol on a sealed bottle/packet and only because of total number of packets/bottles for the purpose of selling in course of routine business, it cannot be said that the person in possession of such material is either dealing with or storing alcoholic substance as prohibited under the Bombay Prohibition Act. (Para 4)

October 2016

Counsel:- ***For Appellant(s):*** *Mr. N.L. Ramnani, Adv.*

For Respondent(s): *Mr. Manan Mehta, APP.*

JUDGMENT

S.G. SHAH, J.: - 1. Heard learned advocate Mr. N.L. Ramnani for the applicant and learned APP Mr. Manan Mehta for the respondent - State.

2. The applicant herein has challenged the order dated 21.6.2007 by the Addl. Sessions Judge, 2nd Fast Track Court, Amreli in Criminal Appeal No.29 of 2001, whereby though it is recorded that appeal is dismissed, practically, the appeal is partly allowed, whereby order dated 24.10.2001 by 4th Jt.Civil Judge (J.D.) and J.M.F.C., Amreli in Summary Case No.164 of 2001 is modified. Trial Court, by such order dated 24.10.2001, imposed fine of Rs.500/- in addition to punishment of sentence of six months for committing offence u/s.67 (1)A(1) of the Bombay Prohibition Act; whereas, the Sessions Court has while modifying such sentence, though confirmed the amount of fine, which is already deposited by the appellant before the trial Court, reduced the period of sentence from six months to till rising of the Court (TRC).

3. Therefore, the applicant has challenged said order in this Revision Application, contending that in fact, the material, which was found from him being UD Cologne, can never be termed as a contraband material and therefore, he cannot be punished. In support of his submission, learned advocate for the applicant is relying upon the decision of Collector of same district dated 12.3.1985 in Appeal No.12 of 1984 wherein while considering the nature of such substance, namely, UD Cologne with reference to the Mumbai Spirituous Preparations [Interstate Trade And Commerce] Control Act, 1957, wherein the Collector has specifically observed that there is no ban on selling such UD Cologne in the State of Gujarat and that authorities have no right to inquire about the use of such materials by its purchaser. Interesting example is given by the Collector when it is observed that the seller of knife has no authority to ask that whether the knife is to be used in kitchen or for some other purpose. However, it is quite clear that the Collector has specifically and repeatedly confirmed in such order that there is no prohibition or ban in dealing with such item in the State of Gujarat. If it is so, thereby, when it is clear that UD Cologne is not considered as an alcoholic substance,

which is prohibited under the Prohibition Act, for keeping or consuming or selling in bottles in different manner in the State, then, there is no reason to initiate proceeding under the Bombay Prohibition Act against the applicant and thereby, to punish him as done by both the Courts below.

4. The perusal of order by the trial Court, which has conducted the matter summarily, makes it clear that the substance, which was recovered from the Aradhana Novelty Stores of the applicant, is nothing, but a sealed bottle of UD Cologne, which is generally used for personal use as a cosmetic item and only because of some negligible percentage of spirit or alcohol in such final product, it cannot be said that because of n number of bottles stored in the Novelty Store for business purpose, the applicant has consumed or dealt with the alcoholic substance, which is otherwise prohibited under the Bombay Prohibition Act. It cannot be ignored that in sanitizers and wipes also, limited percentage of alcohol exists, but only because of disclosing the percentage of alcohol on a sealed bottle/packet and only because of total number of packets/bottles for the purpose of selling in course of routine business, it cannot be said that the person in possession of such material is either dealing with or storing alcoholic substance as prohibited under the Bombay Prohibition Act.

5. Therefore, there is material irregularity and illegality in the impugned order in confirming the conviction of the present applicant. Hence, the Revision Application is required to be allowed.

6. The present Criminal Revision Application is allowed. Thereby, the impugned orders dated 24.10.2001 in Summary Case No.164 of 2001 by the 4th Jt.Civil Judge (J.D.) & J.M.F.C., Amreli so also the order dated 21.6.2007 in Criminal Appeal No.29 of 2001 by the Addl. Sessions Judge, 2nd Fast Track Court, Amreli are hereby quashed and set-aside. Therefore, the applicant is acquitted and declared innocent and acquitted from all the charges levelled against him in such cases. In view of such acquittal, the amount of fine, if any deposited by the applicant, shall be refunded back to him.

7. Rule is made absolute.

8. R & P if any received, shall be sent back to the concerned trial Court forthwith.

***Result*:-** Criminal Revision Application is allowed.

October 2016