

*** THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

+ Criminal Petition Nos.84, 86, 89 and 97 of 2015

%02.02.2015

Crl.P.No.84 of 2015:

Between:

Md. Akbar.
....Petitioner

AND

State of Telangana,
Rep. by Public Prosecutor,
High Court of Judicature at Hyderabad
For the States of Telangana and A.P.
Respondent

! Counsel for Petitioner : Sri A. Prabhakar Rao

^ Counsel for Respondent : Public Prosecutor

< Gist:

> Head Note:

? Cases referred:

- 1) Unreported judgment in Crl.P.No.13587 of 2014 dt.21.11.2014
- 2) Unreported judgment in Crl.P.No.11194 of 2014 dt.16.09.2014
- 3) 2002 Crl.L.J. 1105 = 2002 (1) ALD (Crl.) 137
- 4) 2006 (2) ALT (Crl.) 257 (DB) (AP)
- 5) 2014 (6) ALD 380
- 6) Unreported judgment in Crl.P.Nos.2512, 3123 & 3163 of 2013 dt.30.04.2013
- 7) Unreported judgment in Crl.P.No.10825 of 2014 dt.24.09.2014

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Criminal Petition Nos.84, 86, 89 & 97 of 2015

Common Order:

Factual matrix of the following cases is thus:

1a) **Crl.P.No.84 of 2015** is filed by the petitioner/accused under Section 482 r/w 457 of Cr.P.C. seeking release of 230 plastic gunny bags each containing 60 Kgs. of *Black Jaggery* totalling 13,800 Kgs.; two plastic bags each containing 25 Kgs. of Navasaram totalling 50 Kgs. and one plastic bag containing 10 Kgs. of *Alum* concerning to PCOR No.835 of 2014-15 of Excise Station, Jedcherla, Mahabubnagar District which were seized by the Prohibition and Excise Police on the ground that the said property was involved in the commission of offence under Section 34(e) of A.P. Excise Act, 1968 (for short “the Excise Act”) r/w 3(b) and 4(1) (iii) of the GUR (Regulation of Excise) Order, 1968.

b) **Crl.P.No.86 of 2015** is filed by the petitioner/A2 under Section 482 r/w 457 of Cr.P.C. seeking release of 10 quintals of *Black Jaggery* and 50 Kgs. of *Alum* concerning to Cr.No.102 of 2014 of Nellikudur PS, Warangal District which were seized by Prohibition and Excise Police on the ground that the said property was involved in the commission of offence under Section 34(e) of Excise Act and Section 5 of GUR (Jaggery) Regulation Use Order, 1968.

Petition filed by the petitioner/A2 under Section 457 of Cr.P.C. for release of the property was dismissed by learned Judicial First Class Magistrate, Thorrur in her order dated 01.09.2014. Hence the present petition before High court.

c) **Cr.P.No.89 of 2015** is filed by the petitioner/A1 under Section 482 r/w 457 of Cr.P.C. seeking release of 340 bags of

Black Jaggery each containing 50 Kgs. totalling 170 Quintals and two bags of *Alum* each containing 20 Kgs. totalling 40 Kgs. concerning to Cr.No.262 of 2014 of Bhupalapally PS, Warangal District which were seized by Prohibition and Excise Police on the ground that the said property was involved in the commission of offence under Section 34(e) of Excise Act and Section 5 of GUR (Jaggery) Regulation Use Order, 1968.

Petition filed by the petitioner/A1 under Section 457 of Cr.P.C. for release of the property was dismissed by learned Additional Judicial Magistrate of First Class, Parkal in his order dated 12.12.2014. Hence the instant petition.

d) **CrI.P.No.97 of 2015** is filed by the petitioner/A2 under Section 482 r/w 457 of Cr.P.C. seeking release of 30 bags of *Black Jaggery* each containing 50 Kgs. totalling 15 quintals and two bags each containing 50 Kgs. of *Alum* totalling 100 Kgs. concerning to Cr.No.32 of 2014 of Maripeda PS, Warangal District which were seized by Prohibition and Excise Police on the ground that the said property was involved in the commission of offence under Section 34(e) of Excise Act. Hence the present application.

Petition filed by the petitioner/A2 under Section 457 of Cr.P.C. for release of the property was dismissed by learned Judicial First Class Magistrate, Thorrur in her order dated 09.07.2014.

2) Sri A.Prabhakar Rao, learned counsel appearing for petitioners in all the above cases argued that possession,

collection, importing, exporting and transporting of *Black Jaggery*, *Navasaram* and *Alum* cannot be said to be an offence under Section 34 of Excise Act since none of the aforesaid material is an '*intoxicant*' within the meaning of Section 2(19) of Excise Act and therefore registration of above crimes by the concerned police is nothing but abuse of process of law. In that context of the matter, the petitioners in the above cases are having good ground to succeed and therefore, pending the cases they are entitled to release of subject property. But in CrI.M.P.Nos.3357, 48 and 2267 of 2014 (in CrI.P.Nos.86, 89 and 97 of 2015 respectively) learned Magistrates have dismissed the petitions filed by the petitioners under Section 457 Cr.P.C. on an erroneous view that they had no jurisdiction. His submission is that when the materials involved in each case do not satisfy the definition '*intoxicant*', no offence is made out and thereby their seizure amounts to illegal and hence the petitioners in those cases need not approach Deputy Commissioner of Prohibition and Excise seeking release of the materials and instead the learned Magistrate can order interim custody. On this aspect he relied upon the following decisions:

1. *Bhukya Laxman vs. State of Telangana*^[1]

2. *Jangam Janaiah vs. State of Telangana*^[2]

3a) Per contra, vehemently opposing the petitions, learned Public prosecutor argued that though *Black Jaggery*, *Navasaram* and *Alum* are not specifically mentioned as '*intoxicants*' under Section 2(19) of Excise Act, still it is an admitted fact that they are used for manufacture of I.D. Liquor and therefore, the Excise

Police on *bona fide* suspicion seized those materials and it cannot be said that no offence is made out against the petitioners/accused.

b) He further argued that in view of Section 46 of Excise Act the petitioners have to approach the Deputy Commissioner of Prohibition and Excise seeking interim custody of their materials and therefore the learned Magistrates have rightly dismissed their petitions. He relied upon the following decision on the aspect that '*Black Jaggery*' was held to be having no other legitimate purpose and utility except for manufacture of intoxicant.

Ganesh Traders vs. District Collector, Karimnagar and others^[3]

He also cited the decision reported in ***Commissioner of Prohibition and Excise vs. Sri Balaji Traders***^[4] in which the principles laid down in ***Ganesh Traders***'s case (3 supra) are reiterated.

c) Learned Public Prosecutor also relied upon the following decisions on the point that Deputy Commissioner of Prohibition and Excise alone is competent to pass an order for release of materials seized by the Excise Police.

1. ***Banavathu Babu vs. Government of Andhra Pradesh***^[5]

2. ***Azmeera Saraiah vs. State of A.P. and another***^[6]

3. ***K.Sasi Kumar vs. State of A.P.***^[7]

4) In the light of above rival arguments, the point for determination in these petitions is:

“Whether there are merits in the petitions to allow?”

5a) **POINT**: The main ground on which interim custody is sought for is that *Black Jaggery*, *Navasaram* and *Alum* are not ‘*intoxicants*’ within the purview of Section 2(19) of Excise Act and therefore, at the very threshold no offence was made out against any of the petitioners and therefore, seizure of those materials is illegal.

b) Section 2(19) of Excise Act reads thus:

"intoxicant" means any liquor as defined in Clause (21) or any intoxicating drug as defined in Clause (20) and includes gulmohwa (that is mohwa flower)"

It is true that Section 2(19) of Excise Act has not comprehended the aforesaid materials as ‘*intoxicants*’. However, that is not the end of the matter. In respect of *Black Jaggery*, in ***Ganesh Traders***’s case (3 supra) the majority decision of the Full Bench is thus:

“31. On the analysis above 1 hold that "Black Jaggery" which has no other legitimate, established or demonstrable purpose and utility except for the manufacture of an intoxicant, is comprehended within the meaning of the expression "materials" in Section 13(f) and as such is susceptible to the regulatory framework and to the penalties set out in the 1968 Act including Section 34 thereunder.

32. As potential hardship and grave inconvenience would ensue in the absence of a clear prescription as to what constitutes "Black Jaggery" within the meaning of the 1968 Act, the State Government is directed to prescribe, by an appropriate instrument, the description, character and composition of "Black Jaggery" that would have no other use except for the manufacture

of an intoxicant; prescribe procedures for prompt and speedy analysis of "Black Jaggery" seized, duly specifying the authority or agency for conduct of such analysis; prescribe the time frame within which the report of such an analysis should be submitted to the regulatory agency and shall further specify that on such report recording that the commodity seized is not "Black Jaggery" within the meaning of the 1968 Act as interpreted by this court above, the seized material and the vehicles carrying the same shall be released forthwith and further proceedings dropped.

33. As "Black Jaggery" in general may include "Black Jaggery" within the meaning of the 1968 Act and as the question is whether a specific sample of Black Jaggery includes "Black Jaggery" as comprehended within the meaning of the 1968 Act and as this identification is possible only after the analysis of the sample, I hold that the satisfaction of the regulatory agency/authority under the Act that a specific material is "Black Jaggery" within the meaning of this Act, would justify the seizure thereof for the purpose of further proceedings, which shall of course, be subject to the result of the analysis." (Emphasis supplied)

Thus, it was observed in majority decision that *Black Jaggery* had no legitimate purpose except for manufacture of 'intoxicant' and so it comes within the meaning of expression '*material*' in Section 13(f) and consequently under Section 34 of Excise Act. It was observed that till the State Government prescribe by an appropriate instrument, the description, character and composition of *Black Jaggery* that would have no other use except for the manufacture of an intoxicant and prescribe procedures for prompt and speedy analysis of *Black Jaggery* seized, the satisfaction of Regulatory Authority that a specific material is *Black Jaggery* within the meaning of the Excise Act would justify the seizure for the purpose of further proceedings and of course subject to the result on analysis. Therefore, the Excise Police on reasonable belief that *Black Jaggery* was

intended for manufacture of ID Liquor can seize it. In my view, the same principle can be applied to other two materials also. In the light of above precedential jurisdiction, it has now to be seen any reasonable case is made out against the petitioners in the above cases.

6a) In Crl.P.No.84 of 2015 the facts are that when the Excise Police along with Panchas went to the shop of the petitioner viz. Indian Traders in Bodepally, Nagarkurnool road he was not present and the Excise Police found 230 plastic gunny bags containing 13,800 Kgs. of Black Jaggery, two plastic bags containing 50 Kgs. of Navasaram and one plastic bag containing 10 Kgs. of *Alum* and seized them on the reasonable apprehension that those materials are intended to supply to Veerati Laxmi and M.Chandu manufacturers of ID Liquor.

b) In Crl.P.No.86 of 2015 the facts are that on 16.07.2014 when Police of Nellikodur PS, Warangal District patrolling near Akeru Bridge the vehicle—Tata Ace Auto bearing No.AP 36 TB 5228 came there and it was carrying 10 quintals of Black Jaggery and 50 Kgs. of *Alum* among other goods and A1 and petitioner/A2 were also in the vehicle and on enquiry petitioner/A2 revealed that he purchased the same from Kirana shop of A3. Then on the apprehension that the materials were intended to prepare ID Liquor the police have seized them.

c) In Crl.P.No.89 of 2015 the facts are that on 04.12.2014 when Police of Bhupalapally PS, Warangal District patrolling near Bambulagadda main road they noticed one lorry bearing No.AP 03 X 8012 carrying 170 quintals of *Black Jaggery* and 54 Kgs. of

Alum and on enquiry the driver of the lorry revealed that petitioner purchased the same from M/s.Venikateswara Traders, Penumaluru, Chittoor District for preparation of liquor. Then the police have seized them.

d) In CrI.P.No.97 of 2015 the facts are that on 20.02.2014 when Police of Maripeda PS, Warangal District patrolling near Yellampet X road, they noticed Tata Ace Trolley bearing No.AP 36 TB 2144 carrying 15 quintals of *Black Jaggery* and one quintal of *Alum* and on enquiry the driver of the trolley revealed that petitioner is doing *Black Jaggery* business and so the police on apprehension seized them.

So, as can be seen from the facts, the police have seized the materials on a reasonable apprehension. Therefore, the petitioners cannot harp that registration of FIRs. against them is illegal.

7) Then coming to the issue whether a Magistrate can order interim custody of the materials seized by the police or whether the Deputy Commissioner of Prohibition and Excise is empowered in this behalf, the same is no more *res integra*. On this aspect, it is useful to extract Section 46 of the Excise Act which reads thus:

“46. Confiscation by Prohibition and Excise Officers in certain cases.--

(1) Notwithstanding any thing contained in this Act or any other law for the time being in force, where any thing liable for Confiscation under Section 45 is seized or detained under the provisions of this Act, the officer seizing and detaining such property shall, without any unreasonable delay; produce the said seized property before the Deputy Commissioner of Prohibition and Excise who has jurisdiction over the area.

(2) On production of said seized property under sub-section (1) the Deputy Commissioner of Prohibition and Excise if satisfied that an offence under this Act has been committed, may, whether or not a prosecution is instituted for the commission of

such an offence, order, **Confiscation** of such property.

(3) While making an order of **Confiscation** under sub-section (2), the Deputy Commissioner of Prohibition and Excise may also order that such of the properties to which the order of **Confiscation** relates which in his opinion cannot be preserved or are not fit for human consumption be destroyed.

(4) Where the Deputy Commissioner of Prohibition and Excise after passing an order of **Confiscation** under Sub-section (2) is of the opinion that it is expedient in the public interest so to do, he may order the confiscated property or any part thereof to be sold by public auction or dispose of departmentally.

(5) The Deputy Commissioner of Prohibition and Excise shall submit a full report of all particulars of **Confiscation** to the Commissioner of Prohibition and Excise within twenty four hours of such **Confiscation**.

(6) The Deputy Commissioner of Prohibition and Excise shall for the purpose of this Act, have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (Central Act 5 of 1908) when making enquiries under this section in respect of the following matters, namely:-

(a) receiving evidence on affidavits,

(b) summoning and enforcing the attendance of any person and examining him on oath; and

(c) compelling the production of documents.”

46 (A) xx xx xx

46 (B) xx xx xx

46 (C) xx xx xx

46 (D) xx xx xx

46(E) **Bar of jurisdiction--**

“Notwithstanding any thing contained in the Code of Criminal Procedure, 1973 (Act 2 of 1974) when the Deputy Commissioner of Prohibition and Excise or the appellate authority is seized with the matter under this Act, no court shall entertain any application in respect of excisable articles, any package, covering, receptacle, any animal, vehicle or other conveyance used in carrying such articles as far as its release, confiscation is concerned and the jurisdiction of the Deputy Commissioner of Prohibition and Excise or the appellate authority with regard to the disposal of the same shall be exclusive.”

8) This Court in successive judgments held in terms of Section 46 of Excise Act that the party has to approach the Deputy Commissioner of Prohibition and Excise for interim custody of property seized.

a) In **Banavathu Babu's** case (5 supra) it was observed thus:

“There is considerable amount of force in the submission made by the learned Government Pleader. It is appropriate to note that the A.P. Excise Act and A.P. Prohibition Act are special legislations. When a special piece of legislation confers power of confiscation and confers power upon a particular authority to deal with such property and further when that provision sets out that notwithstanding anything contained for the time being in force in any other law, the intention of the statute maker becomes explicitly clear. The power available to a Magistrate under Section 457 of the Code of Criminal Procedure shall be construed to have been taken away and corresponding power is conferred upon the notified agency by the statute maker (Emphasis supplied). Section 46 of the Act specifically dealt with the issues relating to confiscation of properties, which are seized in connection with the offences committed under the Act. Therefore, it is the Deputy Commissioner of Prohibition & Excise concerned, who has the exclusive authority and power to deal with all the aspects relating to confiscation of the property seized in relation to prohibition and excise offences.”

b) In another judgment of this Court in **Azmeera Saraiah's** case (6 supra) similar view is expressed as follows:

“The crucial question which requires consideration in this case is that at what stage the petitioner has to approach this Court under Section 482 Cr.P.C. When the provisions of A.P. Excise Act clearly mandate when the Deputy Commissioner of Prohibition and Excise is seized of the matter and any property/vehicle is seized in connection with commission of offence under A.P. Excise Act the Deputy Commissioner alone should be approached for interim custody of the property, the petitioners without approaching the Deputy Commissioner of Prohibition and Excise cannot approach this Court directly under Section 482 Cr.P.C. seeking interim custody of the vehicle. Further when the Deputy Commissioner of Prohibition of Excise alone is empowered to direct interim custody of the property/vehicle seized in connection with the commission of offence under A.P. Prohibition and Excise Act the petitioner cannot approach the Magistrate wrongly and thereafter, under the guise that the Magistrate returned the application cannot approach this

Court under Section 482 Cr.P.C.” (Emphasis supplied)

c) Similar view was expressed in **K.Sasi Kumar’s** case (7 supra) also.

In view of the authoritative precedential jurisprudence upholding the power of Deputy Commissioner of Prohibition and Excise, petitioners cannot by-pass the said authority and file petitions before the concerned Judicial Magistrate of First Class or before the High Court without exhausting remedy before the statutory authority.

9) In this regard, the judgments relied upon by the petitioners in the cases of **Bhukya Laxman** and **Jangam Janaiah** (1 and 2 supra) can be ignored for the reason that in those decisions the effect of Section 46 of Excise Act conferring power exclusively on the Deputy Commissioner of Prohibition and Excise was not considered.

10) In the result, I find no merits in the above petitions and accordingly these Criminal Petitions are dismissed.

As a sequel, miscellaneous petitions in the Criminal Petitions pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 02.02.2015

Note: L.R. copy to be marked: Yes / No

Murthy

[\[1\]](#) Unreported judgment in CrI.P.No.13587 of 2014 dt.21.11.2014

[\[2\]](#) Unreported judgment in CrI.P.No.11194 of 2014 dt.16.09.2014

[\[3\]](#) 2002 CrI.L.J. 1105 = 2002 (1) ALD (CrI.) 137

[\[4\]](#) 2006 (2) ALT (Crl.) 257 (DB) (AP)

[\[5\]](#) 2014 (6) ALD 380

[\[6\]](#) Unreported judgment in Crl.P.Nos.2512, 3123 & 3163 of 2013 dt.30.04.2013

[\[7\]](#) Unreported judgment in Crl.P.No.10825 of 2014 dt.24.09.2014