IN THE HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

CRIMINAL REVISION CASE Nos. 267 and 504 OF 2007

Crl. R.C. No.267 of 2007

Between:

Eswaran Swamy

.. Petitioner

and

State of Andhra Pradesh
Rep. by Public Prosecutor
High Court, Hyderabad

.. Respondent

Crl. R.C. No.504 of 2007

Between:

M.A.Habeebulla

.. Petitioner

and

State of Andhra Pradesh
Rep. by Public Prosecutor
High Court, Hyderabad

.. Respondent

DATE OF ORDER PRONOUNCED: 28.07.2015

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No

2. Whether the copies of judgment may be marked to Law Reporters/Journals? Yes/No

3. Whether their Ladyship/Lordship wish to Yes/No

see the fair copy of the Judgment?

HON'BLE SRI JUSTICE M.S.K. JAISWAL

CRIMINAL REVISION CASE Nos. 267 and 504 OF 2007

COMMON ORDER:

These two revision cases are heard together and being disposed of by this common order as both the cases arise out of the same judgment.

2. Crl. R.C. No.267 of 2007 and Crl. R.C. No.504 of 2007 are filed by the petitioner/A3 and petitioner/A1 respectively, under Sections 397 and 401 Cr.P.C, against the judgment dated 08.02.2007 in Criminal Appeal No.2/2006 passed by I Additional District & Sessions Judge, Kurnool.

3. The petitioner in Crl.R.C. No.504 of 2007 is A1, whereas the petitioner in Crl.R.C. No.267 of 2007 is A3, in C.C. No.65 of 2003 on the file of Special Judicial Magistrate of First Class (Prohibition & Excise), Kurnool.

4. The facts, in brief, are that on 14.09.2000 during the course of the checking of vehicles near Thungabhadra Dam by the Excise officials, they found one tanker bearing registration No.KL07-C-8289, which was proceeding towards Kurnool from Hyderabad and the same was inspected. On inspection, it was found that the inside portion of the tanker is carrying 7,000 litres of rectified spirit. At that time, A1 who was driving the tanker, and the non-petitioner/A2, who was said to be the cleaner, were arrested. In the presence of P.W.1-Village Official, PWs 2 to 4, who are excise officials, have interrogated the accused and it is said that A1 has confessed that the rectified spirit is being transported at the influence of A3, who is the owner of the tanker. With the said allegations, charge sheet was filed and after trial, the learned Magistrate found A1 and A3 guilty of the offence punishable under Section 34(a) of the A.P. Excise Act, 1968, and has convicted **A1** and sentenced him to undergo simple imprisonment for six months and also to pay a fine of Rs.5,000/-, and in default to suffer simple imprisonment for one month, and further convicted **A3** and sentenced him to undergo simple imprisonment for one year and also to pay a fine of Rs.10,000/-, and in default to suffer simple imprisonment for three months. Aggrieved by the same, the petitioners/A1 and A3 have preferred Criminal Appeal No.2/2006 before the learned I Additional District & Sessions Judge, Kurnool, who in turn by judgment dated 08.02.2007, dismissed the said appeal, confirming the view taken by the trial Court in finding the guilt of the appellants for the offence punishable under Section 34(a) of the A.P.Excise Act, 1968, however, reduced the sentence of imprisonment to six months and also reduced the fine amount to Rs.5,000/- so far as A3 is concerned, while maintaining the sentence imposed on A1 by the trial Court.

5. The learned counsel for petitioners/A1 and A3 submits that while A1 was found to be driving the tanker, which was transporting the rectified spirit, so far as A3 is concerned, except for the alleged confession said to have made by A1 in the presence of Excise Officials and independent witness-PW1, absolutely there is nothing on record to show that it is A3 at whose instance the spirit was being transported. The documents that were produced on record, no doubt, show that A3 is the owner of the tanker, which was being found transporting contraband on the date when it was inspected, the independent panch witness-PW1 did not say anything about the so-called confession said to have made by A1, implicating A3 in the alleged offence. The only evidence against A3, according to the Excise Officials is that on the basis of confession of A1, it is A3, who is behind transporting of the contraband, there is no evidence whatsoever so far as involvement of A3 is concerned. Merely because, A3 is the owner of tanker, he cannot be said to be the owner of the rectified spirit that was being illegally transported by the driver and cleaner of the tanker. Admittedly, the tanker was proceeding from Hyderabad to Kurnool, and as per the confession the contraband was to be delivered at Chennai, which was loaded at Nanded. A3 is a resident of Kerala and he says that he has absolutely no knowledge whatsoever about the activities of the driver and cleaner viz., A1 and A2 respectively, in transporting the contraband illegally. It is also on record that the tanker bearing registration No.KL07-C-8289 has already been confiscated and the sale proceedings thereof have been remitted to the Government treasury.

6. So far as A1 is concerned, there is evidence of the Excise Officials and the panch witness that he was found driving the tanker at the relevant time. The trip sheet and other documents produced, show that it is A1, who was the driver of tanker. Both the Courts below have found A1 guilty of the offence and sentenced him to undergo simple imprisonment for six months taking into consideration the evidence on record. In the facts and circumstances of the case, I see no reason to interfere with the said finding, which is based on the legally acceptable evidence.

7. So far as A3 is concerned, as already stated except the fact that he is the owner of tanker, which was found containing the contraband, there is nothing on record to show that he had knowledge about the contraband being transported by the driver and cleaner of tanker. The so-called confession said to have made by A1 in the presence of PW1 has not been established. Even the Excise Officials admit that in the confession and panchnama, there are material alterations and therefore, A3 cannot be found to have committed the offence. Considering the evidence on record, I feel that the evidence, so far as A3 is concerned, is not sufficient for imputing knowledge to him about the contraband that was being transported at his instance, and hence, he is entitled to the benefit of doubt.

8. In the result, while dismissing Crl.R.C. No.504 of 2007, Crl.R.C.No.267 of 2007 is allowed, and the conviction imposed on A3 vide judgment dated 30.12.2005 in C.C. No.65 of 2003 by the Special Judicial Magistrate of First Class (Prohibition & Excise), Kurnool, as modified vide judgment dated 08.02.2007 in Criminal Appeal No.2 of 2006 by the learned I Additional District & Sessions Judge, Kurnool, is hereby set aside. The bail bonds of A3 shall stand cancelled.

As a sequel, miscellaneous applications, if any, pending in these Criminal Revision Cases shall stand closed.

M.S.K. JAISWAL, J

Date: 28.07.2015
MVA

HON'BLE SRI JUSTICE M.S.K. JAISWAL

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Date: 28.07.2015

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