

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Criminal Petition No.186 of 2015

ORDER:

This petition is filed under Section 482 r/w 457 of Cr.P.C. seeking orders directing the Station House Officer, Tiruvuru, Prohibition and Excise Station, Krishna District to release the Mahindra Bolero Jeep bearing No.AP 20 TB 8546 seized in Cr.No.722 of 2014-15.

2) The factual matrix of the case is that on 22.11.2014 when the Bolero Jeep bearing No. AP 20 TB 8546 was carrying Black Jaggery and Alum and when it reached near Rajupeta, Tiruvuru, the Excise officials intercepted the said vehicle and seized the contraband. The petitioner who is the owner of lorry filed a petition under Section 457 Cr.P.C. for release of the vehicle but the same was dismissed by the learned Magistrate in his order dated 05.12.2014 in CrI.M.P.No.6320 of 2014. Hence the present petition before the High Court.

3) Learned counsel for petitioner submitted that there is absolutely no case against the petitioner as he was not found at the scene of offence and he was not transporting any '*intoxicant*' and he was only the owner of the vehicle and therefore, the trial Court ought to have given interim custody of the vehicle to him but however, it dismissed the petition on an erroneous observation that Magistrate Court is not competent

to release the vehicle. Learned counsel submitted that petitioner is ready to oblige any conditions imposed by the Court and so the vehicle may be ordered to be released as otherwise it will get damaged by lying idle in the police station. Learned counsel relied upon the following decisions on the proposition that the petitioner need not approach Deputy Commissioner of Prohibition and Excise for delivery of property and on the other hand, Judicial first Class Magistrate and the High Court are competent to order delivery.

Peddi Bhoomaiah vs. State of Telangana^[1]

4) Per contra, while opposing the petition, learned Public Prosecutor argued that petitioner knowingly allowed transportation of ‘*intoxicant*’ in his vehicle and therefore, Excise Police have rightly seized the vehicle and if at all he needs custody of his vehicle, the proper statutory authority is the Deputy Commissioner of Prohibition and Excise but not the learned Magistrate and in view of Section 46 of A.P. Excise Act, 1968 (for short “Excise Act”) the jurisdiction of JFCM is barred to order release of the vehicle. On this aspect he relied upon the following decisions.

1. ***Banavathu Babu vs. Government of Andhra Pradesh***^[2]

2. ***Azmeera Saraiah vs. State of A.P. and another***^[3]

3. ***K.Sasi Kumar vs. State of A.P.***^[4]

5) In the light of above arguments, the point for

determination in this petition is:

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

6) **POINT**: As can be seen from the record, the police have seized the materials and vehicle on a reasonable apprehension and hence the petitioner cannot harp that no *prima facie* is made against him.

a) 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.”

7) 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 (2 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 (3 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 (4 supra) also.

8) In this regard, the judgments relied upon by the petitioner in the case of ***Peddi Bhoomaiah*** (1 supra) can be ignored. In that case, the vehicle which was seized in an offence under section 34(e) of Excise Act was ordered to be released by a learned single Judge relying upon the earlier order in ***M/s.Amruthavarshini Dairy Farms Pvt. Ltd. vs. The State***^[5]. It must be noted that in a subsequent decision in ***K.Sasi Kumar's*** case (4 supra) it was held that decision in ***M/s.Amruthavarshini Dairy Farms Pvt. Ltd.***'s case (5 supra) is *per incuriam* since it was rendered against the statutory provision under Section 13-E of A.P. Prohibition Act, 1995. Therefore, the decision in ***Peddi Bhoomaiah's*** case (1 supra) which relied upon ***M/s.Amruthavarshini Dairy Farms Pvt. Ltd.*** (5 supra) cannot be approved. Further, in ***Peddi Bhoomaiah's*** case (1 supra) the effect of Section 46-E of Excise Act was not discussed. Hence the said decision can be ignored.

9) In the result, I find no merits in the Criminal Petition and accordingly the same is dismissed.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 02.02.2015

Murthy

[\[1\]](#) Unreported judgment in Crl.P.No.8823 of 2014

[\[2\]](#) 2014 (6) ALD 380

[\[3\]](#) Unreported judgment in Crl.P.Nos.2512, 3123 & 3163 of 2013 dt.30.04.2013

[\[4\]](#) Unreported judgment in Crl.P.No.10825 of 2014 dt.24.09.2014

[\[5\]](#) Crl.R.C.No.2484 of 2012 dated 11.12.2012