

THE HON'BLE SRI JUSTICE SANJAY KUMAR

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WRIT PETITION No.6912 of 2009

ORDER:

The grievance of the petitioner was that the police authorities seized his stock from his licenced premises at House No.16-7-83, Old Grain Market, Warangal, in violation of law. He also sought a declaration, if necessary, that Crime No.68 of 2009 on the file of Inthezargunj Police Station, Warangal, was illegal.

By a detailed interim order dated 07.04.2009, this Court directed release of the seized stocks to the petitioner pending further orders. This Court took note of the fact that the search and seizure conducted at the petitioner's licenced premises was by a Sub-Inspector of Police and held that search and seizure operations were illegal as a Sub-Inspector of Police did not have the jurisdiction to conduct the same.

The Assistant Sub-Inspector of Police, Inthezargunj Police Station, Warangal, filed a counter-affidavit stating that he along with police constables conducted the search and seizure at the petitioner's licenced premises and basing upon the confessional statements and recovery panchanama, Crime No.68 of 2009 was registered under Section 188 read with Section 34 (a), (e) and (f) of the Andhra Pradesh Excise Act, 1968 (for brevity 'the Act of 1968') and Section 135 (c) of the Representation of Peoples Act, 1951, on the file of Inthezargunj Police Station.

As regards the jurisdictional issue which was raised by the petitioner, the Assistant Sub-Inspector of Police merely referred to the provisions of Section 55 of the Act of 1968.

Section 55 of the Act of 1968 deals with the power to search without warrant. For exercising such power, it would be necessary for

the Officer concerned to record the grounds for his belief that obtaining a search warrant would afford the offender an opportunity to escape or to conceal evidence before conducting the search and seizure. Nothing is stated in the counter as to compliance with this statutory mandate. Further, the counter is silent altogether as to whether the Assistant Sub-Inspector of Police had the jurisdiction to conduct the search and seizure at all.

The learned Assistant Government Pleader pointed out that the Sub-Inspector of Police addressed letter dated 30.03.2009 to the Station House Officer, Inthezargunj Police Station, Warangal, referring to the search and seizure operations. However, the contradiction between the counter and this letter is not explained.

As the matter stands, there is no material placed before this Court to infer that the search and seizure operations were conducted by an Officer who was empowered to do so.

It is stated that the seized stock was released pursuant to the interim order and Sri A.Ravinder, learned counsel, further informs this Court that Crime No.68 of 2009 registered on the file of Inthezargunj Police Station, Warangal, finally culminated in the acquittal of the petitioner by the competent criminal Court.

In that view of the matter, the impugned search and seizure operations are held to be illegal.

The writ petition is accordingly allowed.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

Date:23.09.2015

GJ