

THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION No.6266 of 2009

ORDER:

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This writ petition was filed assailing the order dated 12.03.2008 passed by the Deputy Commissioner, Prohibition and Excise, Mahabubnagar Division, confiscating the petitioner's Tata lorry bearing registration No. AP22 T 7189, which was confirmed in appeal by the Commissioner of Prohibition and Excise, Andhra Pradesh, vide order dated 10.11.2008.

By interim order dated 25.03.2009, this Court directed the respondent authorities to release the petitioner's lorry subject to the condition that he furnishes a bank guarantee for the value of the vehicle as may be determined by the Motor Vehicles Inspector concerned, apart from giving an undertaking to the effect that he would produce the vehicle as and when required and would not alienate or create any third party rights therein or change its nature.

Sri M. Damodar Reddy, learned counsel for the petitioner, states that the above interim order was complied with and that the custody of the vehicle is presently with the petitioner.

Perusal of the confiscation order dated 12.03.2008 reflects that the petitioner's vehicle was loaded with contraband viz., 930 plastic crates, each crate containing 12 bottles of 650 ml. Liquor; one plastic bag containing 10 kgs. of raw chloral hydrate; one plastic bag containing 50 kgs. of sugar; one plastic bag containing 20 kgs. of silver paste; and one plastic bag containing 28 kgs. of dried yeast.

The above material was seized under cover of a panchanama. While so, the petitioner claims that his vehicle was never used for transportation of any prohibited material or contraband. In his explanation dated 25.02.2008, the petitioner, on the one hand, stated that no contraband had been found in his vehicle but on the other hand, stated that he never had any intention to use the said vehicle for transportation of the prohibited material. Admittedly, the petitioner was not present at the time of seizure of the contraband and the vehicle.

Sri M. Damodar Reddy, learned counsel, is unable to cite any circumstance to doubt the veracity of the finding recorded in the confiscation order as to the seizure of the contraband from the vehicle in question. As stated supra, the seizure was effected under the cover of a panchanama. This Court therefore finds no reason to doubt the finding of the authorities in this regard.

After the deletion of the proviso to Section 45(2) of the Andhra Pradesh Excise Act, 1968, *mens rea* on the part of the owner is not required to be established by the excise authorities for confiscating his vehicle which is used in the excise offence. This was confirmed by the Supreme Court in **Commissioner, Prohibition and Excise, Andhra Pradesh vs. Sharana Gouda**.

This being the legal position, the petitioner cannot rely upon his absence of intention to use the vehicle for transportation of illicit liquor. This Court therefore finds no reason whatsoever to interfere with the confiscation effected of the petitioner's vehicle which was confirmed in appeal. As the said vehicle has already been released upon the petitioner furnishing a bank guarantee for the value thereof, the interests of justice would be adequately served by allowing the excise authorities to encash the said bank guarantee and appropriating the proceeds thereof to the State exchequer.

The writ petition is disposed of accordingly.

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

JUSTICE SANJAY KUMAR

5th October, 2015

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