

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

Criminal Petition No.571 of 2011

ORDER:-

This criminal petition is filed under Section 482 Cr.P.C., by the petitioner, who is A.2 in P.R.No.1259/2010-11 of Prohibition and Excise Station, Miryalaguda, Nalgonda District, registered under Section 7(A) read with 8(e) of the A.P.Prohibition Act, 1995 and Section 34(e) of A.P.Excise Act, 1968.

The allegations in brief are that the excise officials went to Kuriya Thanda on 11-01-2011 and searched the house of the non-petitioner/A.1 and found 60 litres of I.D.Liquor and 100 litres of F.J.Wash in a cement tub including 200 Kgs., of black jaggery and 30 Kgs., of Alum. It is further alleged that on interrogation, A.1 confessed that he purchased the black jaggery and alum from the petitioner/A.2.

It is the contention of the petitioner that he is innocent of the crime and he has been falsely implicated. Merely on the basis of a statement said to have been made by A.1 that he purchased the black jaggery and alum from A.2 the crime has been registered against him. It is further contended that the petitioner is a merchant running a shop by name M/s.Sri Venkateshwara Kiranam and General, Miryalaguda, with a valid certificate issued by the Commercial Tax authorities, that his business is to purchase the kirana items such as black jaggery, alum and other provisional items from wholesalers and to sell them to the customers as per their requirements, that the said item like black jaggery is an agricultural produce and there is no law prohibiting sale, purchase and transportation of the said item. Therefore, the crime registered against the petitioner is liable to be quashed.

Inherent powers under Section 482 Cr.P.C. can be exercised to prevent abuse of process of Court or to secure the ends of justice or to carry out the orders passed under this Code. There cannot be any dispute that if uncontroverted allegations do not make out *prima facie* case of the offence alleged, then only question of quashing the proceedings arise.

At this stage, the statements of witnesses and the allegations in the charge-sheet have to be looked into for the purpose of ascertaining whether petitioner has committed an offence punishable under Section 34 (e) of the A.P.Excise At, 1968.

There cannot be any dispute that mere possession of black jaggery and alum by itself is not an offence. Similarly, they are not prohibited articles under the provisions of the Excise Act. They may be used as raw material for the purpose of illicit distillation of liquor. If the petitioner knows or has reason to believe that A.1 or any person to whom black jaggery and alum was sold is likely to use the same for the purpose of I.D. liquor, then certainly he can be said to have abetted the offence.

In this case, even if the entire allegations in the charge-sheet and the statements of witness and panchanama drafted by the Excise Police is taken as true and correct, at this stage, at best, it would only go to show that A.1 who has allegedly distilled liquor purchased the black jaggery and alum, which are raw material for preparation of I.D. liquor from the present petitioner. There is no evidence to show that the petitioner knowing fully well that A.1 was involved in the manufacture of illicit liquor, sold black jaggery and alum to him. Further more, the petitioner is doing legal business who is having a trade licence. Therefore, continuation of proceedings against the petitioner is nothing but abuse of process of law.

The material on record in the instant case, at best, would go to show that A.1 (the non-petitioner) who was illegally distilling the liquor purchased the black jaggery and alum from the petitioner/A.2. There is no evidence to show that the petitioner/A.2 was aware about the activities of the non-petitioner/A.1 and the petitioner/A.2 cannot be imputed with the knowledge that A.1 having purchased the black jaggery and alum from him was using the same for distilling the liquor illegally. Therefore, continuation of proceedings against the petitioner is nothing but abuse of process of law.

Accordingly, the criminal petition is allowed quashing the investigation in P.R.No.1259/2010-11 of Prohibition and Excise Station, Miryalaguda, Nalgonda District, insofar as it relates to the petitioner/A.2 is concerned.

Miscellaneous petitions, if any, pending in this Criminal Petition shall stand closed.

M.S.K.Jaiswal, J

10th June, 2015

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