

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

WRIT PETITION No.4397 of 2009

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Between:

G.Banesh

...Petitioner

and

The Deputy Commissioner of Prohibition and Excise and another

...Respondents

DATE OF JUDGMENT PRONOUNCED: 22.09.2015

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE SANJAY KUMAR

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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
see the fair copy of the Judgment? Yes/No

THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION No.4397 of 2009

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ORDER:

By way of the amended prayer, the petitioner challenged the confiscation proceedings dated 18.10.2008 passed by the Deputy Commissioner, Prohibition and Excise, Karimnagar, and sought a consequential direction to return his fixed deposit amount of Rs.27,000/-.

By order dated 05.03.2009, this Court directed release of the petitioner's auto bearing No.AP01 W 4150 subject to the petitioner renewing the fixed deposit of Rs.27,000/- which was made on 11.09.2008 and giving an undertaking that he would not alienate, transfer, sell, alter or change any part of the vehicle and produce the vehicle as and when required by the authorities.

Perusal of the impugned confiscation proceedings dated 18.10.2008 reflects that the petitioner's auto was seized while carrying 40 liters of illicitly distilled liquor. The petitioner, being the owner of the auto, failed to submit his reply to the show cause notice dated 19.09.2008 which was served upon him on 29.09.2008. Upon perusing the

material on record, the Deputy Commissioner, Prohibition and Excise, Karimnagar Division, concluded that an offence of illegal transportation of I.D. Liquor had been committed which was punishable under Section 7(A) read with Section 8(b) of the Andhra Pradesh Prohibition Act, 1995 and accordingly confiscated the petitioner's vehicle.

Sri Ch.Anjaneyulu, learned counsel for the petitioner, contended that the offence was committed by the driver employed by the petitioner and that the petitioner had no knowledge of the illegal transportation of I.D. Liquor in the auto by the said driver. He placed reliance on the Division Bench judgment of this Court in **G.NASAR REDDY v. COMMISSIONER OF PROHIBITION AND EXCISE, ANDHRA PRADESH**^[1] wherein the Division Bench held that as the petitioner in that case had no knowledge of the transportation of liquor by the driver, he could not be held liable. However, in **COMMISSIONER, PROHIBITION AND EXCISE, ANDHRA PRADESH v. SHARANA GOUDA**^[2], the Supreme Court considered the legal position in the light of the deletion of the proviso to Section 45(2) of the Andhra Pradesh Excise Act, 1968, under Andhra Pradesh Amendment Act No.4 of 1994. The Supreme Court observed that after the omission of the proviso, *mens rea* was not required to be established to make out the commission of an offence by the owner of the vehicle. In the light of the law laid down by the Supreme Court

subsequently, the earlier decision of the Division Bench of this Court does not constitute good law.

In that view of the matter, the confiscation of the petitioner's vehicle cannot be held to be illegal on the sole ground that the petitioner, being the owner of the auto, claimed ignorance of the transportation of I.D. Liquor. However, as the vehicle in question has already been released pursuant to the order passed by this Court and the value of the vehicle, as determined by the transport authorities, has been remitted by way of a fixed deposit which is stated to have been kept alive by virtue of the interim order, the interest of justice would be adequately served by allowing the authorities to appropriate the proceeds of the said fixed deposit instead of seizing the vehicle again at this late stage.

It shall therefore be open to the excise authorities to encash and appropriate the said fixed deposit to the State exchequer.

The writ petition is disposed of accordingly.

Pending miscellaneous petitions shall stand closed in the light of the afore-stated final order. No order as to costs.

SANJAY

KUMAR, J

22nd SEPTEMBER, 2015.

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[\[1\]](#) 2002(6) ALT 90 (D.B.)

[\[2\]](#) (2007) 6 Supreme Court Cases 42