

HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND
HON'BLE SRI JUSTICE S.V. BHATT

WRIT APPEAL No. 1314 OF 2005

29-12-2015

Between:

The Commissioner of Prohibition & Excise, Andhra Pradesh,
Hyderabad and others

... Appellants

And

Yousuf Khan

... Respondent

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HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE

AND

HON'BLE SRI JUSTICE S.V. BHATT

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WRIT APPEAL No. 1314 OF 2005

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JUDGMENT: (per the Hon'ble the Acting Chief Justice Dilip B. Bhosale)

This appeal is directed against the order dated 15-03-2005 passed in Writ Petition No.25385 of 2000, whereby the writ petition filed by the respondent has been allowed. The writ petition was directed against the proceedings dated 03-08-1998 and 30-09-2000 of the Deputy Commissioner of Prohibition and Excise, Nizamabad and the proceedings dated 16-08-1999 of the Commissioner of Prohibition and Excise, Andhra Pradesh, Hyderabad.

The respondent is the owner of a lorry bearing registration No. AP 9U 3846. It was intercepted by the respondents, and it is alleged that 24 bottles of BP whisky containing 750 ml each were found in the vehicle (lorry). In view thereof, a case was registered against the driver bearing Crime No.151/96-97, dated 28-01-1997. Admittedly, no offence came to be registered against the respondent, who is owner of the vehicle. By virtue of interim order passed by this Court, interim custody of the vehicle was given to the respondent subject to his furnishing bank guarantee for an amount of Rs.1,00,000/-. The learned single Judge considered the challenge in the light of Full Bench judgment of this Court in Writ Petition No.157 of 2000 and observed that the respondent had no knowledge about the contraband nature of the goods transported in the lorry by the passenger.

Admittedly, the goods were belonging to the passenger who was in the lorry at the relevant time. The relevant observations made by learned Judge read thus:

“A Full Bench of this Court in W.P.No.157 of 2000 held that the law providing for confiscation is an appropriatory legislation and the same is to be strictly construed. Before an order of confiscation is passed, the authority must satisfy itself that all the ingredients therefor are satisfied keeping in view the proposition of law in mind that confiscation is deprivation of property and existence of *mens rea* is also an essential ingredient and plays a vital role in such matters. Where an offence is said to have been committed, the owner of the vehicle can show by producing evidence that he had no knowledge therefor. The owner of the vehicle has no knowledge about the contraband nature of the goods transported in lorry by the passenger. In the instant case also the owner is not having any knowledge about the illegal transportation of the liquor bottles by the passenger or the driver as the case may be. Hence, I am of the opinion that the owner cannot be made liable for transportation of the said contraband and the vehicle is not liable for confiscation. Therefore, I have no hesitation to set aside the order of confiscation and direct the respondents to release the vehicle of the petitioner. The bank guarantee or security, if any, furnished by the petitioner will be returned to him.”

Learned Government Pleader placed reliance upon the judgment of the Supreme Court in ***Commr., Prohibition and Excise v. Sharana Gouda***^[1] to contend that *mens rea* is not an essential ingredient to be established in a case like one in the hand.

We have perused the judgment and also the provisions contained in section 45 of the Andhra Pradesh Excise Act, 1968 and, in our opinion, the reliance placed on the judgment is misplaced. It does not deal with the vehicle or the knowledge of the owner of vehicle. That apart, admittedly, the owner was not prosecuted for the alleged offence and nothing is brought on record to show that he had knowledge about the contraband nature of the goods transported in the lorry by the passenger. In the circumstances, we find no reason to interfere with the order passed by the learned single Judge.

The writ appeal is dismissed.

Miscellaneous petitions, if any, also stand disposed of. No order as to costs.

DILIP B. BHOSALE, ACJ

S.V. BHATT, J

29-12-2015

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[\[1\]](#) (2007) 6 SCC 42