

THE HON'BLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION No.27566 of 2015

ORDER:

This writ petition is filed under Article 226 of the Constitution of India seeking the following relief:

“to issue writ of Mandamus to declare the action of the Respondent No.2 in passing the Orders Dated 17.03.2015 in Cr.No.34/2009/C wherein he confiscated the Vehicle Piaggio Auto Bearing No.AP 28Y 6909 of the Petitioner without considering his acquittal in C.C.No.494 of 2009 passed by the Hon'ble Judicial Magistrate of First Class, at: Ramannapet in its Order Dated 01.10.2014 as it being illegal, arbitrary, unjustified and also in violation of principles of natural justice and also violation of provisions of the Excise Act, 1968 and consequently set-aside the Orders Dated 17.03.2015 thereby to direct the Respondent No.2 to return the FDR for an amount of Rs.56,000/- to the Petitioner as per the Orders Dated 01.10.2014 in C.C.No.494 of 2009 passed by Hon'ble Judicial Magistrate of First Class, at: Ramannapet.”

Heard Sri G. Rajeshwar Reddy, learned counsel for the petitioner and learned Government Pleader for Prohibition and Excise for respondents, apart from perusing the material available before this Court.

The Deputy Commissioner of Prohibition and Excise, Nalgonda District – 2nd respondent herein pressed into service the provisions of A.P. Excise Act, 1968 and passed an order vide Cr.No.34/2009/C, dated 17-03-2015 under Section 46 (2) of A.P. Excise Act, 1968 (for short, ‘the Act’) ordering confiscation of the vehicle (auto) bearing No.AP-28-Y-6909 and I.D. liquor

Challenging the validity of the said order of confiscation, dated 17-03-2015, the present writ petition has been filed.

It is submitted by the learned counsel for the petitioner that the impugned order of confiscation is highly illegal, arbitrary and violative of Articles 14 and 19 (g) of Constitution of India besides being opposed to the very spirit and object of provisions of the Act. It is further submitted that the 2nd respondent herein, without considering the explanation, dated 02-03-2015 submitted by the petitioner herein passed the impugned order of confiscation.

On the contrary, it is vehemently contended by the learned Government Pleader that the present writ petition filed under Article 226 of the Constitution of India is not maintainable in view of the availability of alternative remedy of appeal to the petitioner herein under the provisions of Section 46 (c) of the Act.

Section 46 (c) of the Act reads as under:

“46-C – Appeal: Any person aggrieved by an order passed by Deputy Commissioner of Prohibition and Excise under section 46, may within sixty days from the date of passing such order appeal to Commissioner of Prohibition and Excise, who may after giving reasonable opportunity to the appellant pass such order as he deems fit.”

A reading of the above provision of appeal makes it abundantly clear that any person aggrieved by an order passed by the Deputy Commissioner of Prohibition and Excise under Section 46 of the Act is entitled to file appeal before the Commissioner of Prohibition and Excise.

In view of the above alternative remedy of appeal available to the petitioner herein, this Court is not inclined to entertain the present writ petition against the order of confiscation passed by the Deputy Commissioner, Prohibition and Excise.

In view of the above reasons, the writ petition stands disposed of, keeping it open for the petitioner herein to file appeal before the appellate authority under the provisions of Section 46 (c) of the Act within a period of two (2) weeks from the date of receipt of a copy of this order. It is also open for the petitioner to file an appropriate application seeking custody of vehicle before the appellate authority. If any such appeal and application are filed within the time stipulated, the same be considered and appropriate orders be passed by the Commissioner of Prohibition and Excise, as expeditiously as possible, preferably within a period of six (6) weeks thereafter.

Miscellaneous Petitions pending, if any, shall stand closed.

There shall be no order as to costs.

A.V. SETHA SAI, J

August 28, 2015

Pn

THE HON'BLE SRI JUSTICE A.V. SETHA SAI

-
-
-
-
-
-
-

-

-

WRIT PETITION No.27566 of 2015

-

August 28, 2015

Pn