HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE

AND

THE HON'BLE SRI JUSTICE S.V. BHATT

WRIT APPEAL No. 442 of 2015

Dt:10.06.2015

Between:

The Government of Andhra Pradesh,

Rep. by its Principal Secretary,

Prohibition & Excise Department,

Secretariat, Hyderabad and others.

… Appellants

And

S.Ananthalakshmi.

… Respondent

HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE

AND

THE HON'BLE SRI JUSTICE S.V. BHATT

WRIT APPEAL No. 442 of 2015

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

This writ appeal challenges the order, dated 11.12.2014, in

W.P.No.38128 of 2014. The sole respondent sought release of vehicle No.AP05 UU TR AR 9463 allegedly involved in Crime No.5 of 2014. The learned Single Judge disposed of the writ petition observing that the appellants are bound to comply with the directions issued, while releasing the vehicle, by learned Magistrate *vide* order, dated 25.07.2015, in Crl.M.P.No.455 of 2014 in Crime No.5 of 2014.

Learned Government Pleader for Prohibition and Excise appearing for the appellants, at the outset, invited our attention to the judgment of this Court in **Oruganti Seshachala Venkateswarlu Vs. Government of Andhra Pradesh, Rep. by Commissioner, Excise & Prohibition, Hyderabad and others** and submitted that in view of the bar of jurisdiction under Section 46-E of the A.P. Excise Act, 1968 (for short 'the Act'), the order of learned Magistrate releasing the vehicle itself was wrong and illegal.

We have perused the said judgment, so also the order, dated 24.10.2014, passed in W.P.No.31687 of 2014, wherein the learned Judge referred to the judgment of this Court in **Public Prosecutor Vs. G.Marimuthu Konar** and held that if the crime is reported to the learned Magistrate and is pending trial before him, the Magistrate would certainly have jurisdiction to pass appropriate orders under Section 457 Cr.P.C. We have perused the judgment in **Oruganti Seshachala Venkateswarlu's** case (one supra) and we find from the relevant discussion that Section 46-E of the Act does not debar police/excise officials from seizing the vehicle for registering a case and reporting crime to the Magistrate. If the property is produced before the Magistrate, it is open for the Magistrate to pass an order under Section 457 Cr.P.C. Even the order, dated 24.10.2014 in W.P.No.31687 of 2014, was passed by the very same learned Single Judge, who passed the impugned order in the appeal, which shows that the learned Judge was conscious of the law laid down by this Court in the aforementioned judgments.

Hence, we do not find any merits in the appeal and it is dismissed.

Consequently, miscellaneous petitions, if any, also stand disposed of.

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DILIP B. BHOSALE, ACJ

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S.V. BHATT, J

Dt:10.06.2015

kdl