

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

Crl.R.C.Nos.496, 497, 603 and 604 of 2015
and
Crl.M.P.Nos.3264, 3265, 4196 and 4197 of 2016

1. B.Murugesan
2. Bettappan ... Petitioners in Crl.R.C.496/2015
/Appellants

S.Balakrishna ... Petitioner in Crl.R.C.497/2015
/Appellant

Vilvathri Sampath ... Petitioner in Crl.R.C.603/2015
/Appellant

S.Bose ... Petitioner in Crl.R.C.604/2015
/Appellant

Vs.

Inspector of Police,
Prohibition Enforcement Wing,
Hosur, Krishnagiri District. ... Respondent in all Crl.R.Cs.
/Complainant

Prayer in all Crl.R.Cs.: Criminal Revision Cases filed under Section 397 r/w. 401 of the Code of Criminal Procedure, praying to set aside the order in Criminal Miscellaneous Petition Nos.7164, 7194, 7193 and 7192/2014 respectively in Crime No.1396/2014, dated 10.03.2015 on the file of Judicial Magistrate No.II, Hosur, and allow the criminal revision cases.

In all Crl.R.Cs.

For Petitioners : Mr.B.Kumar, Senior Counsel
for M/s.K.C.S.K.Balaji

For Respondent : Mrs.M.F.Shabana,
Government Advocate (Crl.Side)

COMMON ORDER

These Criminal Revision Cases are directed against the order dated 10.03.2015 passed by the learned Judicial Magistrate No.II, Hosur, in Criminal Miscellaneous Petition Nos.7164, 7194, 7193 and 7192/2014 respectively in Crime No.1396/2014.

2. The learned Senior Counsel appearing for the petitioners would mainly contend that the respondent police arrested the petitioners herein and also seized their vehicles on the allegation that they have transported empty beer bottles from Tamil Nadu to Madhya Pradesh without any basis. The petitioners have filed petitions in CrI.M.P.Nos.7164, 7194, 7193 and 7192/2014 respectively before the learned Judicial Magistrate No.II, Hosur, under Section 451 of Cr.P.C., for return of used empty beer bottles, which were kept under the custody of the Court. The learned Magistrate, without applying his mind, dismissed all the petitions and directed to hand over all the beer bottles to the Government and also directed to be sold the same in public auction and the sale proceeds of the auction shall be deposited in the Criminal Court Deposit and the sale proceeds shall be disposed in accordance with the judgment of the main case. The learned Senior Counsel appearing for the petitioners would further contend that in this case, there is no crime or no offence involved in the transportation of empty beer bottles from Tamil Nadu to Madhya Pradesh. The Investigation Officer arrested the accused and seized the empty beer bottles on the presumption that it will be used for transport of illegal liquor. Hence, the learned Senior Counsel appearing for the petitioners prayed that the seized articles may be returned to the petitioners and the criminal revision cases may be allowed.

3. The learned Government Advocate (CrI.Side) appearing for the respondent would vehemently contend that the empty beer bottles were transported from Tamil Nadu to Madhya Pradesh by the petitioners in their vehicle. In this case, investigation is pending. The trial Court, correctly passed the order. There is no illegality or infirmity in the order passed by the trial Court and hence, the learned Government Advocate prayed that the Criminal Revision Case may be dismissed.

4. In this case, admittedly, at the time of seizing the vehicle, the Investigating Officer seized only the empty beer bottles, which were transported from Tamil Nadu to Madhya Pradesh. The transportation of empty beer bottles will not be an offence and there is no specific prohibition or restriction for transportation of empty beer bottles from Tamil Nadu to

Madhya Pradesh. The restriction of empty beer bottles clearly affect the personal right of the petitioners. Hence, the argument of the learned Senior Counsel appearing for the petitioners that the restriction of empty beer bottles would affect the personal right of the petitioners is accepted.

5. The learned Senior Counsel appearing for the petitioners filed a copy of the order dated 27.04.2015 passed by this Court in W.P.No.9368 of 2015, wherein, at paragraph Nos.6 and 7, this Court has observed as follows:-

"6. Now the only issue needs consideration is whether the stoppage of the petitioner's lorry carrying empty beer bottles at Hosur Check post on 18.12.2014 on the premise that the empty beer bottles carried in their lorries would be misused can be a basis for doing so? In the counter affidavit filed by the respondent nowhere the respondent has thrown any light against any such misuse committed by the petitioners. Even as per the counter affidavit, it could be seen that only preliminary investigation has been conducted by Dr.T.Kannan, Inspector of Police, PEW, Krishnagiri at Indore (Madhya Pradesh), he had not supported the inference that the empty beer bottles belonging to Tamil Nadu Breweries are being misused in Madhya Pradesh State. When the respondents have not produced any document showing the registration of complaint against any person belonging to the petitioner's company showing that the empty beer bottles purchased from Tamil Nadu have been illegally misused, in the absence of such document produced before this Court, the action of the respondent cannot be espoused. Besides, a mere prevention of movement of empty beer bottles by way of an executive action without legislative authority is invalid, since such an action infringes the fundamental right of the petitioner to carry on business, for it is guaranteed under Article 19(1)(g) of the Constitution of India and also under Article 301 of the Constitution of India.

7. For the above said reasons, the Writ Petition stands allowed. The respondents are restrained from preventing the petitioner company from selling and transporting the empty beer bottles collected from inside the State of Tamil Nadu. No costs. Consequently, connected miscellaneous petition is closed."

6. The above judgment is squarely applicable to the facts of the present case. In view of the above, this Court is of

the considered view that the orders of the learned Magistrate to hand over the empty beer bottles to the Government and the Government, in turn, sold the same in public auction and remit the sale proceeds into the Criminal Court Deposit and the sale proceeds shall be disposed in accordance with the judgment of the main case, are erroneous and hence, the said orders passed by the learned Judicial Magistrate No.II, Hosur, are liable to be set aside.

7. Accordingly, all these criminal revision cases are allowed and the orders dated 10.03.2015 passed by the learned Judicial Magistrate No.II, Hosur, in Crl.M.P.Nos.7164, 7194, 7193 and 7192/2014 respectively in Crime No.1396/2014, are set aside. The petitions filed for return of property by the present petitioners are also allowed, if not already sold by the authorities. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

Jrl

To

1. The Judicial Magistrate No.II,
Hosur.
2. Do- Through The Chief Judicial Magistrate,
Krishnagiri.
3. The Inspector of Police,
Prohibition Enforcement Wing,
Hosur, Krishnagiri District.
4. The Public Prosecutor,
High Court, Madras.

+4cc's to Mr.K.C.S.K.Balaji, Advocate, S.R.Nos.47213 to 47216

Crl.R.C.Nos.496, 497, 603 and 604 of 2016

KSJ(CO)
CA(26/08/2016)