

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.24286 OF 2016

ORDER :

Petitioner has filed this Writ Petition to declare the action of the respondents in not releasing term deposit of Rs.48,500/- and Original Registration Certificate in respect of the petitioner's vehicle i.e., Maruthi Zen bearing No.AP 29 F 0027 in spite of the acquittal of the petitioner by the competent Criminal Court on 19.09.2015 in C.C.No.2086 of 2014.

2. Petitioner's car was seized by the Inspector of Police, Hayathnagar in the year 2014 and Crime No.324 of 2014 was registered for the offences under Section 34(e) of A.P. Excise Act, 1968 and Section 171(B)(3) of IPC. It was alleged that the vehicle was carrying various brands of I.M.L liquor and that the petitioner's driver committed the said offences.

3. Petitioner obtained interim custody of the vehicle from the 2nd respondent on 25.06.2014 on condition of the petitioner furnishing a fixed deposit for Rs.48,500/- in favour of the 2nd respondent with a validity of 36 months. Petitioner accordingly submitted the said term deposit to the 2nd respondent with a request to release the vehicle. Thereupon, the vehicle of the petitioner was released on 30.06.2014.

4. The criminal case registered by the police was numbered as C.C.No.2086 of 2014 before the Spl. Judicial First Class Magistrate Excise Court-cum-XII Metropolitan Magistrate, Cyberabad, L.B.Nagar, R.R. District and on 19.09.2015 the accused was found not guilty of the offences alleged and was acquitted. The Court directed that the vehicle be retained with the owner, after appeal time is over.

5. After acquittal of the driver in the criminal case, petitioner approached the respondents for release of the term deposit of Rs.48,500/- and Original Registration Certificate. Petitioner contended that the respondents are not releasing the same for reasons best known to them.

6. The 2nd respondent has filed a counter affidavit admitting about the acquittal of petitioner's driver in the criminal case, but contending that the said vehicle is liable for confiscation under Section 46(2) of the A.P. Excise Act, 1968, that a show case notice proposing confiscation of the petitioner's vehicle was issued on 27.07.2016 and it was sent to the Station House Officer, Hayathnagar Police Station for service on the petitioner.

7. The Government Pleader for Prohibition and Excise appearing for respondents states that proceedings for confiscation of the seized articles are independent of the criminal proceedings and that acquittal in the criminal case is not a ground for the release of the seized vehicle.

8. Section 46 of the A.P. Excise Act, 1968 states as follows:

“46. confiscation by Excise Officers in certain cases:-

- (1) Notwithstanding anything contained in this Act or any other law for the time being in force, where anything liable for confiscation under Section 45 is seized or detained under the provisions of this Act, the Officer seizing and detaining such property shall, without any unreasonable delay, produce the said seized property before the [Deputy Commissioner of Prohibition and Excise] who has jurisdiction over the area.
- (2) On production of the said seized property under sub-section (1) the [Deputy Commissioner of Prohibition and Excise] if satisfied that an offence under this Act has been committed, may, whether or not a prosecution is instituted for the commission of such an offence, order confiscation of such property.
- (3) While making an order of confiscation under sub-section

(2) the [Deputy Commissioner of Prohibition and Excise] may also order that such of the properties to which the order of confiscation relates which in his opinion cannot be preserved or are not fit for human consumption be destroyed.

(4) Where the [Deputy Commissioner of Prohibition and Excise] after passing an order of confiscation under sub-section (2) is of the opinion that it is expedient in the public interest so to do, he may order the confiscated property or any part thereof to be sold by public auction or dispose of departmentally.

(5) The [Deputy Commissioner of Prohibition and Excise] shall submit a full report of all particulars of confiscation to the Commissioner of Prohibition and Excise within twenty-four hours of such confiscation.

(6) The [Deputy Commissioner of Prohibition and Excise] shall, for the purposes of this act have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (Central Act 5 of 1908) when making enquiries under this section in respect of the following matters, namely:

- (a) receiving evidence on affidavits;
- (b) summoning and enforcing the attendance of any person and examining him on oath; and
- (c) compelling the production of documents.”

9. Thus under Sub-Section (1) proceedings for confiscation of any thing, which is liable for confiscation under Section 46 of the said Act have to be initiated without unreasonable delay.

10. In the present case, no such proceedings were initiated at the time when the vehicle was seized in April, 2014. So it cannot be said that initiation of proceedings for confiscation on 27.07.2016, more than two years after commission of the alleged offence on 28.04.2014, is without unreasonable delay. Therefore, the very initiation of proceedings under Section 46 of the Act by the 2nd respondent is without jurisdiction.

11. Therefore the 2nd respondent is not entitled to proceed with the said proceedings for confiscation of the petitioner's vehicle at this point

of time and the said proceeding are quashed.

12. Accordingly, the Writ Petition is allowed; the 2nd respondent is directed to release the petitioner's term deposit of Rs.48,500/- along with accrued interest thereon, as well as the Original Registration Certificate of the said vehicle within a period of one week from the date of receipt of a copy of this order. There shall be no order as to costs.

13. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S. RAMACHANDRA RAO, J

08th August, 2016.
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