

HON' BLE SRI JUSTICE SURESH KUMAR KAIT

CrI.P. No. 7211 of 2011

ORDER:-

This Criminal Petition is filed seeking to quash all further proceedings in Cr.No. 107 of 2002-2003 of Prohibition and Excise Police Station, Devarakonda, Nalgonda District, registered for the offence punishable under Section 8(c) read with 22 of N.D.P.S. Act.

The case of the prosecution is that on 26.07.2002 at about 12:45 p.m., during the course of inspection, the Sub-Inspector, Prohibition and Excise along with the Inspector visited toddy shop of A2, whereas A1 was present in the depot and transacting the business. On enquiry, A1 produced the license. On inspection, they found wooden tubs containing 200 litres of toddy each. LWs.4 and 5 conducted chemical test in the presence of LWs.1 and 2 and found no chloral hydrate. Then, they picked up three samples of toddy under cover of panchanama and registered a case against the petitioner under Rule 24 of A.P. Excise Act. Thereafter, a sample was sent to chemical examiner and the report thereof revealed that toddy contained diazepam. Then, Section of law was altered to Section 8(c) read with 22 of N.D.P.S. Act.

The learned counsel for the petitioner –accused submits that the petitioner is innocent of the offence alleged against

him and he has been falsely implicated in the case. He further submits that on 22.08.2002, the petitioner filed an application before the Superintendent, Prohibition and Excise, Nalgonda to send second sample to State Food Laboratories, however on 25.08.2002, the same was rejected. On 31.08.2002, the license of the petitioner was suspended. Therefore, on 02.09.2002, the petitioner filed W.P. No. 16507 of 2002 seeking to send the second sample to an independent laboratory i.e. State Food Laboratory, Nacharam. Accordingly, the second sample was sent on 05.10.2002 and a report was received from the Laboratory with the opinion that the sample does not contain diazepam.

The learned counsel for the petitioner further submits that on 05.02.2003, this Court passed orders permitting the petitioner to carry out business. However, on 19.02.2003, the Superintendent, Prohibition and Excise, has again cancelled the license. On 13.12.2004, charge sheet was filed before I Additional Sessions Judge, Nalgonda, however on 23.12.2004, it was returned. On 11.01.2005, charge sheet was resubmitted, and on 08.02.2005, it was once again returned by I Additional Sessions Judge, Nalgonda. On 14.03.2005, charge sheet was again resubmitted, however on 25.03.2005, it was once again returned and till date cognizance of the case has not been taken.

The learned counsel for the petitioner also submits that as per the second report of the sample sent to the Laboratory, Nacharam, it does not contain diazepam. Therefore, the proceedings against the petitioner may be quashed.

The learned Additional Public Prosecutor appearing on behalf of the respondent-State has fairly conceded that this Court, vide order dated 19.08.2011, directed the Registry to call for the report from I Additional Sessions Judge, Nalgonda regarding the charge sheet filed in Cr.No. 107 of 2002-2003. However, he submits that the record of the said case is not traceable, as such, there is no charge sheet pending against the petitioner.

Though the procedure laid down in the Code contemplates that if the documents are misplaced, the Courts reconstruct file with the help of the documents available with the petitioner – accused or any other authority, however in the present case, the State has not taken any interest to take further steps in reconstructing the file after 2005. Eleven years passed and the sword of the crime has been hanging upon the petitioner. As admitted by the learned Additional Public Prosecutor, there are no chances of finding any document relevant to the present crime.

The undisputed facts are that even after charge sheet was returned on 25.03.2005, no steps have been taken by the

prosecution so far. Moreover, the report on the second sample sent to the State Food Laboratory, obviously does not contain diazepam. Thus, this Court is of the considered opinion that even if trial is allowed to continue, the petitioner cannot be convicted. Therefore, there is no purpose to direct the State to reconstruct the file in the present case.

Keeping in view the peculiar facts and circumstances of the case, I hereby quash the proceedings in Cr.No. 107 of 2002-2003 of Prohibition and Excise Police Station, Devarakonda, Nalgonda District. Consequently, the bail bonds of the petitioner, if any, shall stand cancelled.

Accordingly, the Criminal Petition is allowed.

As a sequel, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

13.12.2016

bcj

SURESH KUMAR KAIT, J