

HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

CRIMINAL PETITION No.8071 of 2011

ORDER :

This Criminal Petition is filed under Section 482 Cr.P.C., seeking to quash the proceedings initiated against the petitioner/A.4 in C.C.No.13 of 2009 on the file of the Court of Judicial First Class Magistrate at Thorrur, Warangal District, registered for the offences punishable under Section 34(e) of the A.P. Excise Act, 1986.

2. The brief facts of the prosecution case are that on 21.06.2008, the 2nd respondent/complainant, who is LW.1, along with LWs.2 to 9, came to P.S. Rayaparthi and lodged a written complaint alleging that on 21.06.2008 they received credible information that Thoudshetti Rama Rao, s/o. Bixapathy, and Nagamalla Purushotham, s/o. Sathaiah, who are A.1 and A.2, respectively, were selling jaggery and alum to needy persons for preparation of Gudamba since few months without any valid license and that they dumped jaggery and alum in their respective houses. On receipt of the said complaint, LW.16 - G. Madanlal, S.I. of Police, P.S. Rayaparthi, has registered a case in Crime No.72 of 2008 for the offence punishable under Section 34(e) of the A.P. Excise Act, 1986 and raided on the houses of A.1 and A.2 and found them absconding. On conducting search, no jaggery or alum was found in their houses. On 23.06.2008, LW.16 raided the houses of A.1 and A.2 and found jaggery and alum, and the police seized the material under the cover of panchanama. On interrogation, A2 disclosed his name as Nagamalla Purushotham, s/o. Sathaiah, and confessed that he purchased 6 quintals of jaggery and 2 bags of alum from the shop of petitioner/A4 at Thorrur and was selling to needy persons at higher rates. The police after investigation filed charge

sheet against the petitioner and others and the same was numbered as C.C.No.13 of 2009. Aggrieved by the same, the petitioner has preferred the present criminal petition.

3. Heard the arguments of the learned counsel for the petitioner and the learned Public Prosecutor and perused the material on record.

4. Learned counsel for the petitioner submits that the petitioner is doing business in Kirana and General goods under the name and style of M/s. Venkateswara Traders at Thorur Village and Mandal, and that the petitioner is also a dealer in black jaggery and alum and has been purchasing jaggery and alum from the agricultural market yards and wholesalers in the State of Andhra Pradesh and transporting to his place of business and selling the same to the needy persons. The learned counsel submits that the petitioner was implicated in the case on the basis of a confessional statement made by A2 before the police, but the police have not found any material against the petitioner, except the confessional statement of A2, which is inadmissible in evidence. It is further argued that mere possessing or selling of black jaggery and alum by itself would not constitute an offence punishable under Section 34(e) of the A.P. Excise Act. It is also argued that black jaggery is an agricultural produce that is sold in agricultural market yards. It is further argued that the petitioner is not selling black jaggery exclusively to A1, but to several other customers as the petitioner is running a Kirana and General store and is also a dealer in black jaggery. It is also argued that purchase and transportation of black jaggery is neither prohibited nor regulated by any law and that mere possessing of black jaggery do not constitute an offence. The learned counsel further submits that the

Commercial Tax authorities charge 4% of the sale price towards tax for issuing way bills for transportation of black jaggery and hence it is argued that no offence is made out against the petitioner for the offences punishable under the provisions of either A.P. Excise Act or A.P. Prohibition Act and, therefore, sought for quashing the proceedings in C.C.No.13 of 2009.

5. The learned Public Prosecutor has fairly conceded that there is no prohibition for sale of black jaggery and alum.

6. On consideration of the arguments of both the learned counsel, it is to be seen whether possessing of black jaggery and alum by itself would amount to an offence punishable under Section 34(e) of the A.P. Excise Act; and whether prosecution can be launched against A4 based solely on the confessional statement of A2.

7. Learned counsel for the petitioner placed reliance on a decision of this Court in ULLI BHASKAR v. STATE OF A.P.¹ wherein it is held that selling of black jaggery and alum is not an offence. The learned counsel also relied upon another decision of this Court in KOPPULA NAGI REDDY AND OTHERS v. STATE OF TELANGANA² wherein it is held that mere possession of alum and black jaggery do not constitute an offence under Section 34(e) of A.P. Excise Act, more so when there is no recital in the mediators' report that the petitioners were in possession of black jaggery and alum with a view to sell the same for preparation of I.D. liquor.

8. From a perusal of the decisions referred above, it is obvious that mere possession of alum and black jaggery does not constitute an offence

¹ 2004 (1) ALD (Crl.) 561 (AP)

² 2015 (1) ALD (Crl.) 593

under Section 34(e) of the A.P. Excise Act, unless the intention of selling black jaggery was for the purpose of preparing toddy.

9. The petitioner was running a Kirana and General Store under the name and style of M/s. Venkateswara Traders at Thorrur Village and Mandal. He was also a dealer in black jaggery and alum. There is no material on record to show that the petitioner is either involved in preparation of toddy or he is selling black jaggery and alum with the intention to facilitate preparation of toddy. Therefore, mere possession of black jaggery and alum do not constitute an offence unless it is established by the prosecution that the petitioner is selling the same for the purpose of preparing toddy. Further, the charge sheet does not have any ingredients to attract the offence punishable under Section 34(3) of the A.P. Excise Act.

10. In view of the foregoing reasons, and in the light of the above two decisions relied upon by the learned counsel for the petitioner, this Court is of the considered view that the proceedings in C.C.No.13 of 2009 are liable to be quashed.

11. Accordingly, this Criminal Petition is allowed, quashing the proceedings in C.C.No.13 of 2009 on the file of the Court of Judicial First Class Magistrate at Thorrur, Warangal District.

12. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

GUDI SEVA SHYAM PRASAD, J

03.10.2017
Msr

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