

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION No.18137 OF 1996

ORDER:

This writ petition is filed seeking to direct the respondents to release the Bank Guarantee to the petitioner given by the Rayalaseema Grameena Bank, Aluru and permit the petitioner to withdraw the amount from the said bank.

2. It is the case of the petitioner that his tractor bearing No. AP-21-V-0934 was seized by the Inspector of Police, Aluru under Section 34(a) of Andhra Pradesh Excise and Prohibition Act in Crime No.36 of 1994 and subsequently, the same has been released on the application made by the petitioner to the Government on furnishing bank guarantee for Rs.1,80,000/-. Crime No.36 of 1994 has been numbered as C.C.180 of 1994 on the file of the Judicial Magistrate of First Class, Aluru (for short, Court below). As the prosecution has not proved the case beyond reasonable doubt, a Judgment of acquittal dated 28-12-1995 was passed on merits by the Court below. As there was no incriminating evidence against the accused and as the cause of action is one and the same arising out Crime No.36 of 1994 under Section 34(a) of Andhra Pradesh Excise and Prohibition Act, a request has been made by the petitioner to the respondents to release the bank guarantee in view of the order of acquittal. The first respondent - Deputy Commissioner, Prohibition and Excise, Kurnool, in his proceedings dated 5-8-1996, has rejected the request of the petitioner for release of the bank guarantee on the ground that the result of the criminal proceedings either acquittal

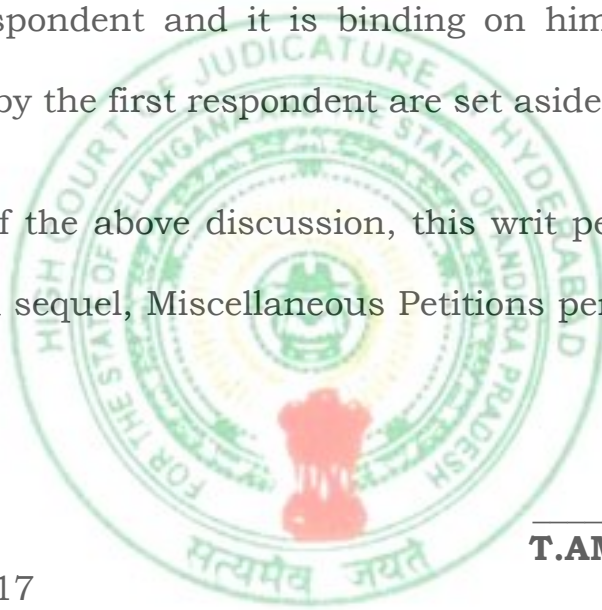
or conviction or otherwise under the provisions of the Act will have no bearing on the orders of confiscation passed under this Act.

3. Heard the learned counsel appearing for the petitioner and the learned Government Pleader for Prohibition and Excise (A.P).

4. The observation of the first respondent cannot be appreciated as the fact reveals that the cause of action, which arose out of the same crime, has already been dealt with by the Court below by going into the merits of the case and by appreciating the evidence on record. The judgment of the Court below prevails over the order of the first respondent and it is binding on him and hence, the orders passed by the first respondent are set aside.

5. In view of the above discussion, this writ petition is allowed. No costs. As a sequel, Miscellaneous Petitions pending if any shall stand closed.

Date:24-11-2017
Shr.



T.AMARNATH GOUD