

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE DR JUSTICE SHAMEEM AKTHER

Writ Appeal No.847 of 2006

JUDGMENT: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

Though the name of Sri Thakur Singh, learned counsel for the respondent-writ petitioner, is printed in the cause list, neither is he present nor is there any representation on his behalf. Heard the learned Government Pleader for Prohibition and Excise appearing on behalf of the appellants.

This appeal is preferred by the respondents in W.P.No.8447 of 2004 aggrieved by the order passed by the Learned Single Judge on 09.03.2005. The 1st respondent-writ petitioner filed the writ petition questioning the order passed by the 3rd respondent on 21.01.2004 in Appeal No.Cr.No.20407/2003/CPE/D4 as illegal and arbitrary.

As the facts of the case have been noted in detail in the order under appeal, it is wholly unnecessary for us to record the same in this order. Suffice it to note that the 1st respondent-writ petitioner contended before the Deputy Commissioner that he had given the auto to the accused on lease of Rs.200/- per day for the purpose of running the Auto to transport passengers; and he had no knowledge of the offence committed by the accused. Based on the facts of the criminal case the Deputy Commissioner, without taking into account the respondent-writ petitioner's plea that he had no knowledge of the offence having been committed, confiscated the vehicle under Section 45 of the A.P.Excise Act, 1968 (for short "the Act").

Aggrieved thereby, the respondent-writ petitioner preferred an appeal before the Commissioner and the appellate authority, by order dated 21.02.2004, dismissed the appeal holding that the respondent-writ petitioner should have taken care to ensure that his property was not put to any illegal use; and, in view of the fact that illicit liquor was being

transported in the said vehicle, it was liable for confiscation. Reliance was placed by the respondent-writ petitioner, before the Learned Single Judge, on the order of a Division Bench of this Court in **G.Nasar Reddy vs. Commissioner of Prohibition and Excise, A.P. and others**¹ to contend that, in cases where the owner of the vehicle has no knowledge about the contraband nature of the goods transported in the vehicle by the driver, and the owner of the vehicle was not made a party to the criminal proceedings, such vehicles cannot be confiscated.

The Learned Single Judge observed that, as the police officials had detected that the driver of the crime Auto was illegally transporting five liters of ID liquor and had seized the same along with the Auto, it could not be said that the respondent-writ petitioner, the owner of the vehicle, had knowledge about transporting of I.D. liquor. On the ground that the respondent-writ petitioner had no knowledge of the liquor being transported, the order passed by the Commissioner dated 21.01.2004 was set aside.

Learned Government Pleader for Prohibition and Excise would submit that the judgment of the Division Bench of this Court in **G.Nasar Reddy**¹ is no longer good law, in view of the subsequent judgment of the Supreme Court in **Commissioner, Prohibition and Excise, A.P. vs. Sharana Gouda**².

The judgment in **Sharana Gouda**² also arose under the A.P. Excise Act, 1968. The Supreme Court noticed that, while Section 45 of the Act had a proviso to sub-section (2) thereof, the said proviso was omitted by A.P. Act 4 of 1994 with effect from 26.11.1993. The proviso which was omitted read as follows:

“Provided that, if anything specified in clause (3) is not the property of the offender, it shall not be confiscated if the owner thereof had no reason to believe that such offence was being or was likely to be committed”.

The Supreme Court, thereafter, observed:

¹ 2002(2) ALD (CrI.) 677 (AP)

² (2007) 6 SCC 42

“.... The effect of omission of the proviso does not appear to have been considered by the High Court. When the proviso was part of the statute, it was provided that if anything specified in clause (3) of Section 45 is not the property of the offender, it shall not be confiscated if the owner thereof had no reason to believe that such offence was being or was likely to be committed. At that stage there was a prohibition on confiscation if owner of the property in question had no reason to believe that such offence was being or was likely to be committed. The position has changed after omission of the proviso. The High Court does not appear to have kept this aspect in view. Therefore, the impugned judgment of the High Court is indefensible and is set aside....”

In view of the change in the law, by A.P. Act 4 of 1994 with effect from 26.11.1993, deleting the proviso, the question whether or not the owner of the vehicle had knowledge of ID liquor being transported in the crime vehicle is of no consequence. The order of the Learned Single Judge is set aside. Consequently, the order of the Commissioner dated 21.01.2004 shall revive and it is open to the appellants herein to take necessary action in accordance therewith.

The Writ Appeal is disposed of accordingly. The miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(DR. SHAMEEM AKTHER, J)

08th February, 2017
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