

**HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**

**CRIMINAL PETITION No.9931 of 2011**

**ORDER :**

This Criminal Petition is filed by the petitioner/A.2 under Section 482 Cr.P.C., seeking to quash the proceedings initiated against him in C.C.No.243 of 2009 on the file of the Court of Additional Judicial First Class Magistrate at Mahabubabad, Warangal District, registered for the offence punishable under Section 34(a)(e) of the A.P. Excise Act, 1986. The petitioner has also sought for stay of all further proceedings, including his appearance in the above said case.

2. Heard learned counsel for the petitioner/A.2 as well as the learned Public Prosecutor for the respondent-State and perused the material on record.

3. Learned counsel for the petitioner submits that the petitioner is innocent of the offence and he has not committed the offence much less the offence with which he was charged. It is further submitted that the petitioner did not sell any Jaggery, particularly to A.1 at any point of time.

4. According to the charge sheet, the allegations against the petitioner/A.2 are that A.1 – Kalakota Venkata Ramana is running a Kirana Shop. He was selling sub-standard Jaggery and Alum in his shop, which was used for manufacturing I.D. Liquor. On 08.04.2009, A.1 has purchased 15 kgs. of sub-

standard Jaggery and 5 kgs. of Alum in the shop of A.2 at Mahabubabad and transporting the same to Nereda on his TVS XL Moped to his shop for selling the same to ID Liquor manufacturers on cheaper rate. The police apprehended him and seized the contraband under cover of panchanama in the presence of mediators, drawn the samples from the seized property and forwarded the same for chemical examination. The seized TVS XL moped and the seized Jaggery were sent to the Deputy Commissioner, Excise and Prohibition, Warangal for confiscation. LW.6, who is the Chemical Examiner, Government Excise and prohibition Regional Laboratory, Warangal, analysed the samples and furnished his report dated 05.05.2009 opining that the samples are containing sugars and extraneous matter and the Jaggery was fit for fermentation producing alcohol and it was unfit for consumption. It is further stated that item No.II is Potassium Aluminium Sulphate, which is Alum. The allegations against the petitioner/A.2 is that A.1 has purchased 15 kgs. of sub-standard Jaggery and 5 kgs. of Alum in the shop of A.2 at Mahabubabad and the samples drawn from the said Jaggery and Alum were sent for chemical analysis report and the Analyst opined that the samples are containing sugars and extraneous matter. The petitioner alleged to have been shown as absconding from arrest and Non-bailable Warrants were sought to be issued against him. Therefore, the petitioner has

approached this Court by way of the present Criminal Petition and obtained interim stay by order dated 18.10.2011.

5. The learned Public Prosecutor submits that since the material used for manufacturing ID Liquor is purchased from the shop of the petitioner and the Chemical Analyst Report reveals that the said material is unfit for consumption, there are no valid grounds for quashing of the proceedings against the petitioner/A.2. It is further submitted that the allegations in the charge sheet reveal that there is a prima-facie case against the petitioner/A.2.

6. The contents of charge sheet reveal that A.1 purchased the Jaggery and Alum from the shop of the petitioner/A.2. Admittedly, the petitioner is absconding by the date of filing the charge sheet. Subsequently, he filed the present Criminal Petition and obtained interim stay in the year 2011 and since the said interim order is in operation, the case could not be proceeded further.

7. It is appropriate to refer to a decision rendered by the Hon'ble Apex Court in CBI v. A. RAVISHANKAR PRASAD<sup>1</sup> referring to a leading case in STATE OF HARYANA v. BHAJAN LAL<sup>2</sup>, wherein some guidelines have been formulated for exercising provision under Section 482 Cr.P.C. The guidelines in BHAJAN LAL's case (3 supra), are as follows:

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<sup>1</sup> (2009) 6 SCC 351

<sup>2</sup> 1992 Supp. (1) SCC 335

*(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*

*(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*

*(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*

*(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*

*(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*

*(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*

*(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.*

In RAVISHANKAR PRASAD's case (1 supra), the Hon'ble

Supreme Court, in paragraphs 45 and 48, observed as follows:

*45. Quashing the proceedings at that stage was clearly an abuse of the process of the court. The court neither considered the entire material nor appreciated the legal position in proper perspective. The impugned judgment is wholly unsustainable in law and is accordingly set aside. Unfortunately, because of unnecessary interference by the High Court under section 482 Cr.P.C. the trial of this case could not be completed and concluded.*

*48. In this view of the fact, in the interest of justice we direct that the trial be now completed as expeditiously as possible. The trial court is directed to conduct the trial on day to day basis and parties are directed to cooperate with the trial court. The trial court shall ensure that unnecessary adjournments be avoided and trial be concluded as expeditiously as possible.*

8. In the light of the above decision and in view of the contents of charge sheet, this is not a fit case to quash the proceedings against the petitioner/A.2.

9. Accordingly, this Criminal Petition is dismissed, with a direction to the police concerned to follow the procedure prescribed under Section 41-A of Cr.P.C., during investigation, in the light of the ratio laid down by the Hon'ble Apex Court in ARNESH KUMAR v. STATE OF BIHAR AND ANOTHER<sup>3</sup>.

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

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GUDISEVA SHYAM PRASAD, J

26.10.2017  
Msr

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<sup>3</sup> 2014 (8) SCALE 250

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL PETITION No.9931 of 2011



26.10.2017  
Msr