

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL PETITION No.8135 of 2011

ORDER :

This Criminal Petition is filed under Section 482 Cr.P.C., to quash the proceedings initiated against the petitioner/A.2 in C.C.No.251 of 2010 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 and Sections 7(A) and 8(e) of the A.P. Prohibition Act, 1995.

2. The brief facts of the prosecution case are that the Sub-Inspector of Police, Nellikuduru Police Station, submitted a report stating that on 30.04.2009 on receipt of reliable information about the preparation of I.D. liquor, he along with the Head Constable secured Photographer and proceeded to Jamathanda Village at about 3.30 p.m. and found one person sat in front of his house and preparing I.D. liquor. On seeing the police, he tried to run away, but he was apprehended and on interrogation, he disclosed his name as Googulothu Beema, s/o. Hariya and also stated that he is preparing I.D. liquor with jaggery purchased from the petitioner. The police on the basis of the said report added the petitioner as A.2 and registered a case in Crime No.71 of 2009 in the aforesaid offences. The police after investigation filed charge sheet

against the petitioner/A.2 and another and the same was numbered as C.C.No.251 of 2010. The name of the petitioner was added in the charge sheet on the basis of the confessional statement given by another accused. Aggrieved by the same, the petitioner has preferred the present criminal petition for quashing of the proceedings in C.C.No.251 of 2010.

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 and black jaggery under the name and style of M/s. Venkateswara Traders at Thorrur Village and Mandal. The petitioner is 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 its needy persons. He also submits that the petitioner was implicated as A.2 on the basis of the confession statement given by A.1 and the police have not collected any material except the confessional statement of A.1, which is inadmissible in evidence. It is further submitted that selling of black jaggery and alum itself is not an offence and the petitioner did not sell black jaggery only to A.1, but he used to sell the same to

several customers, who are in need of it. It is also stated that purchase and transportation of black jaggery is neither prohibited nor regulated under any law and that possession of black jaggery do not constitute an offence punishable under Section 34(e) of the A.P. Excise Act. It is also stated that the black jaggery is an agricultural produce, which is being sold in Agricultural Market Committee. 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 of the aforesaid proceedings.

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

6. On consideration of the arguments of both the learned counsel, it is to be seen that whether possession of black jaggery and alum itself is an offence and whether the confessional statement of A.1 can be based to prosecute A.2 for the offence punishable under Section 34(e) of the A.P. Excise Act.

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 stated that selling of black jaggery and alum is

¹ 2004 (1) ALD (Crl.) 561 (AP)

not an offence even if, to the knowledge of the accused, there is a likelihood of them being used for the manufacture of arrack. The learned counsel also relied upon another decision of this Court in *KOPPULA NAGI REDDY AND OTHERS v. STATE OF TELANGANA*² 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 the mediators' report does not recite that the petitioners were in possession of the material 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 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 and mere possession of black jaggery and alum do not constitute an offence unless it is established by the prosecution that he is selling the same for the purpose of preparing toddy.

10. For the aforesaid reasons and in the light of the above two decisions, this Court is of the considered view that

² 2015 (1) ALD (Crl.) 593

registration of FIR does not constitute any offence and the confessional statement of A.1 is inadmissible in evidence. Hence the FIR is liable to be quashed and consequently, the charge sheet is also liable to be quashed. Further, there is no other material produced before the Court to show that the petitioner is involved in preparation of toddy and with that intention he sold black jaggery and alum. In the absence of any evidence, the FIR and the charge sheet do not stand for scrutiny. Therefore, there are no ingredients to attract the offence punishable under Section 34(e) of the A.P. Excise Act established in this case.

11. Accordingly, this Criminal Petition is allowed and the proceedings in C.C.No.251 of 2010 on the file of the Court of Judicial First Class Magistrate at Thorrur, Warangal District, are quashed.

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

GUDISEVA SHYAM PRASAD, J

03.10.2017.
Msr

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