

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Criminal Revision Case No.1669 of 2017

ORDER:

This Criminal Revision Case, under Sections 397 & 401 of the Code of Criminal Procedure, 1973, ('the Code') filed by the petitioner/ accused is directed against the order, dated 06.06.2017, of the learned Judicial Magistrate of First Class, Rampachodavaram, passed in CrI.M.P.No.1556 of 2017 in Crime No.13 of 2017 of Chintoor Police Station.

2. I have heard the submissions of *Sri S.Barapa Reddy*, learned counsel appearing for the petitioner, and of the learned Public Prosecutor appearing for the respondent/ State of AP. I have perused the material record.

3. To being with, it is to be noted that by the orders impugned in this revision case, the petition of the petitioner/ A1 filed under Section 451 of the Code requesting to pass an order granting interim custody of 400 gunny bags of Black Jaggery, each containing 50 Kgs, was dismissed by the learned Magistrate. Aggrieved thereof, the petitioner is before this Court. The learned Magistrate dismissed the petition *inter alia* observing that the Court is not the competent authority under the provisions of the Andhra Pradesh Excise Act, 1968, for granting interim custody of the property and that the investigation is not completed and that the charge sheet is not yet filed and that the original bill relating to the property is also not produced and that based on the photostat copy of the bill, interim custody of the seized property cannot be granted to the petitioner/ A1.

4. Now, the only point that arises for consideration in this revision case is as to whether, insofar as the present property, that is, Black Jaggery, the

Court of the learned Magistrate and/ or this Court are having jurisdiction and powers to grant interim custody of the said property to the petitioner/ A1?

5. Learned counsel for the petitioner/ accused would submit as under:

There is no dispute that the Black Jaggery is seized in the aforesaid crime from possession of the petitioner/ A1 and that he is the owner of the said property. The seized property was also produced before the learned Judicial Magistrate of First Class and not before the competent authority under the provisions of the A.P. Excise Act. The competent authority under the said Act is not seized of the matter. Since the seizure of the property is reported to the Court and not to the competent authority, the Court of the learned Magistrate is having seisin over the matter. A plain reading of the crime record also shows that the prosecution is not disputing that the petitioner/ A1 is the owner of the property and is otherwise entitled to have interim custody of the property. It is not in dispute that in the village of the petitioner/ A1 and the surrounding villages, the ryots and owners of cattle use Black Jaggery as cattle feed. The petitioner is doing business in general items including Black Jaggery and Alum. He sells Black Jaggery to ryots for the above said purpose. For the purpose of his business, he purchased the Black Jaggery in Chittoor District; and, when the Black Jaggery is being transported from the place of purchase to his business place, the police intercepted the vehicle. On the questioning of the police, the petitioner produced the bill relating to the purchase of the Black Jaggery. The police unnecessarily implicated the subject property in the case. Though no offence has been committed, the property was illegally seized when it is being transported in the lorry bearing no.AP03 TE 3186 and despite the petitioner having valid bill of purchase from Thulasi Traders, Chittoor. Except Black Jaggery and alum, no other substance is seized. Jaggery is not an excisable article. It is not an intoxicant. It is a perishable good. Its worth is Rs.4,00,000/- . Police are not taking proper care of the Black Jaggery seized.

If the valuable property is allowed to remain in the custody of the police without any protection and care, it will get damaged and the petitioner would be put to serious and irreparable loss. The petitioner is prepared to furnish adequate security as may be directed by the Court and abide by any reasonable conditions that may be imposed while ordering interim custody of the property.

6. The learned Public Prosecutor while supporting the orders of the Court below submitted that the quantity of the Black Jaggery seized is huge and that the Black Jaggery is generally used in preparation of illicit liquor/ I D Liquor and the seizure of the property was reported to the learned Judicial Magistrate of First Class and that the Deputy Commissioner of Prohibition & Excise or the appellate authority concerned is the competent authority as per the provisions of the A.P. Excise Act, 1968, (Act 17 of 1968) and that under Section 46-E, jurisdiction of this Court is barred and that neither the Court of the learned Magistrate nor this Court shall entertain any application in respect of excisable articles including any package, covering, receptacle, any animal, vehicle or other conveyance used in carrying such articles and that insofar as release of the seized article/ confiscated article, the jurisdiction of the Deputy Commissioner of Prohibition and Excise or the appellate authority is exclusive.

7. In view of the above submissions, it is necessary to now refer to the relevant provisions and the legal position obtaining.

2(9) "Excisable article" means any alcoholic liquor for human consumption; or any intoxicating drug.

2(20) "Intoxicating drug" means

(a) the leaves, small stalks and flowering or fruiting tops of the Indian hemp plant including all forms known as bhang, siddi, or ganja;

- (b) charas, that is the resin obtained from the Indian hemp plant which has not been subjected to any manipulations other than those necessary for packing and transport;
- (c) any mixture with or without neutral materials of any of the above forms of intoxicating drug or any drink prepared therefrom; and
- (d) any other intoxicating or narcotic substance which the Government may, by notification, declared to be an intoxicating drug, such substance not being opium, cocoa leaf or manufactured drug as defined in Section 2 of the Narcotic Drugs and Psychotropic Substances Act, 1985.”

2(22) “Manufacture” includes every process whether natural or artificial by which any fermented, spirituous or intoxicating liquor or intoxicating drug is produced, prepared or blended and also re-distillation and every process for the rectification of liquor.

2(22-A) “Material” includes molasses, wash and such other substances as the State Government may, by notification, specify:

(22-B) “Molasses” means the heavy dark coloured residual syrup drained away in the final stage of the manufacture of jaggery or sugar or Khandasari sugar cane or gur containing solution or suspension, sugars which can be fermented and includes any product formed by the addition to such syrup of any ingredient which does not substantially alter the character of such syrup but does not include any article which the State Government may, by notification, declare to be molasses, for the purpose of this Act.

46-E Bar of Jurisdiction:- Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (Act 2 of 1974) when the Deputy Commissioner of Prohibition and Excise or the appellate authority is seized with the matter under this Act, no Court shall entertain any application in respect of excisable articles, any package, covering, receptacle, any animal, vehicle or other conveyance used in carrying such articles as

far as its release, confiscation is concerned and the jurisdiction of the Deputy Commissioner of Prohibition & Excise or the appellate authority with regard to the disposal of the same shall be exclusive.”

8. In our States, Black Jaggery or Rotten Jaggery or any other form of jaggery is viewed as agriculture produce or its bi-products and the same do not come within the purview of the list of ‘materials’ used in the manufacture of ID liquor. The above view of this Court finds support from the above stated definitions. As per Section 2(9), Black Jaggery is not an excisable article. It is also not one of the materials in the list of materials as per Section 2(22-A). In fact, Memo No.47802/ Ex.III.1/ 2006-13, dated 20.12.2010, reflects that the Commissioner of Prohibition & Excise, A.P., Hyderabad, sent a proposal for inclusion of Rotten Jaggery under the definition of material in A.P. Excise Act, 1968, so as to ensure effective control of ID arrack and to improve Government Revenue. However, the Government, after careful examination of the matter decided that Black Jaggery or Rotten Jaggery or any other form of jaggery shall be viewed as an agricultural produce or its bi-product and therefore, inclusion of the said materials in the list of ‘material’ used in the manufacture of ID liquor would adversely affect the interests of genuine ryots and the traders, and accordingly decided not to impose restrictions on any agricultural produce, particularly, on Jaggery, Black Jaggery or Rotten Jaggery and eventually, the Government has rejected the proposal to include rotten Jaggery under the definition of ‘material’ under Section 2 of A.P. Excise Act, 1968. Thus, Black Jaggery, which is the subject property herein, is neither an ‘excisable article’ nor a ‘material’ under the provisions of the above said Act and in the considered view of the Government also it is an agricultural produce or a bi-product of an agricultural produce.

9. In the case on hand, the seizure of the black jaggery is not reported to the Deputy Commissioner or the appellate authority under the A.P. Excise Act and therefore, the said competent authority under the Act is not ceased of the matter. A plain reading of Section 46-E of the A.P Excise Act dealing with the 'bar of jurisdiction' makes it patent that when the Deputy Commissioner of Prohibition and Excise or the appellate authority is ceased with the matter under this Act, no Court shall entertain any application in respect of excisable articles etcetera for release as in such cases, the jurisdiction of the Deputy Commissioner of Prohibition & Excise or the appellate authority is exclusive. In matters where either the Deputy Commissioner of Prohibition & Excise or the appellate authority is not ceased with the matter under the Act, the jurisdiction of the Court is saved, more particularly, in respect of articles like Black Jaggery, which are agricultural produce and its bi-products and which are not excisable articles or articles in the list of 'material' covered by the provisions of the A.P. Excise Act. Hence, in the well considered view of this Court, bar under Section 46-E is not attracted to the present case facts.

10. In *Ulli Bhaskar v. State of AP*¹, a learned Judge of this Court dealing with the issue as to whether selling Black Jaggery is an offence even if the seller has knowledge that the purchaser is likely to use the Black Jaggery for manufacture of arrack, held that neither alum nor Black Jaggery are intoxicants either separately or when they are mixed and that they, at best, are raw materials and that possession of either Black Jaggery or alum *per se* is not an offence under the provisions of the Excise Act. In *Chindura Muthaiah & Co., Kamareddy, Nizamabad District, A.P v. Deputy Commissioner of Prohibition and Excise, Karimnagar, A.P.*², a learned Single Judge of this Court held that confiscation under Section 46-A can be ordered only where an offence has been committed, which is punishable under the Act; and, followed

¹ 2004 (1) ALD (CrI.) 561 (AP)

² 2006 (2) ALD 367

the earlier view of this Court that the possession of Black Jaggery even with an intention to manufacture illicit liquor, can, by no stretch of imagination, be said to be an offence, because as per the Excise Act, an offence under Section 34(e) is committed by a person when he is using the material for the purpose of manufacturing an intoxicant. Eventually, this Court held as follows: 'Since admittedly, the petitioners were only transporting Black-Jaggery, but did not indulge in manufacture of an intoxicant, it cannot be presumed that the petitioners had indulged in manufacture of an intoxicant within the meaning of Section 34(e) of the Excise Act.' Thus, this Court is consistently holding that Black-jaggery is not an 'excisable article' or a 'material' in the list of materials, as defined under Section 2(22A) of the Act and that possession of Black Jaggery or transportation of Black Jaggery *per se* is not an offence.

11. It is necessary to now refer to the decision of the Supreme Court in State (NCT of Delhi) v. Narender³, wherein the Supreme Court considered the provisions of the Delhi Excise Act, 2009, including Section 61 of the said Act and Sections 451, 452 and 457 of the Code of Criminal Procedure, 1973, while dealing with a matter related to release of a seized vehicle, which was said to be carrying an intoxicant/ contraband. Having regard to the provisions of the Delhi Excise Act and considering the fact that the seized vehicle was carrying contraband, the Supreme Court noted that there is no challenge to virus of the provisions of the Delhi Excise Act and held that the High Court was not correct in passing the orders releasing the vehicle. Accordingly, the Supreme Court allowed the appeal and set aside the judgment of the High Court while holding that the High Court exceeded in its jurisdiction in directing for release of the vehicle on security. However, in the case on hand, the property involved is not a vehicle carrying contraband and the property is Black Jaggery and it is not an intoxicant or prohibited material as per the provisions of the A.P. Excise Act, as

³ 2014(1) ALT (CrI.) 513 (SC)

already noted supra. In view of the language employed in the provisions of law under A.P. Excise Act and the legal position obtaining in our States and for all the aforesaid reasons, this Court is of the well considered and humble view that the instant case is distinguishable on facts peculiar to it as well as the law prevailing in our States.

12. It is now necessary to restate the following material facts: (i) The ownership of the petitioner/ A1 over the Black Jaggery is not disputed before this Court; (ii) Further, ownership is sufficiently established by first producing the original bill at the inception before the police concerned and later producing the photostat copy of the same before the Court below; (iii) Black Jaggery is an agricultural produce; (iv) It is neither an excisable article nor an intoxicant or nor a material under the provisions of the Act; (v) Admittedly the seizure of the property is reported to the Court of the learned Magistrate and not to the Deputy Commissioner; (vi) Neither the Deputy Commissioner of Prohibition and Excise nor the appellate authority is seized of the matter. In view of the said crucial facts peculiar to the case and the legal-position obtaining in our States this Court finds that the impugned order of the learned Magistrate is not justified and, therefore, the same brooks interference.

13. In the result, the Criminal Revision Case is allowed; and, while setting aside the order, dated 06.06.2017, of the learned Judicial Magistrate of First Class, Rampachodavaram, passed in CrI.M.P.No.1556 of 2017 in Crime No.13 of 2017 of Chintoor Police Station, the said learned Judicial Magistrate of First Class, is directed to give interim custody of the Black Jaggery to the petitioner/ A1 on his furnishing a Bank guarantee from a Nationalized Bank for Rs.1,00,000/- (Rupees One Lakh only) and on his executing a personal security bond for a sum of Rs.3,00,000/- (Rupees Three Lakhs only) and furnishing 3rd party security of two sureties in a like sum each to the satisfaction of the said

learned Magistrate and on the petitioner/ A1 further undertaking that he would co-operate with the investigating agency during the course further investigation.

Pending miscellaneous petitions, if any, shall stand closed.

04th August, 2017
RAR

M. SEETHARAMA MURTI, J

