

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.1037 OF 2017

ORDER:

The petitioner herein, who is owner of two-wheeler motorcycle bearing registration No.AP 03BS 6823, makes a request under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Code') for release of the said vehicle.

2. The facts would show that on 07.01.2017 at about 7.30 a.m., the Prohibition and Excise Sub-Inspector of Police, Piler, under the instructions of Assistant Commissioner (Enforcement), Prohibition and Excise, intercepted the aforesaid vehicle and found the petitioner with two polythene covers containing 10 liters of Illicit Distilled Liquor in each cover and, consequently, he was arrested and produced before the learned Additional Junior Civil Judge - cum - Judicial Magistrate of First Class, Piler, who sent him for judicial custody on 07.01.2017 and later he was released on bail. Admittedly, the seized vehicle is lying in Prohibition and Excise Police Station, Piler.

3. Sri T. Nagarjuna Reddy, learned counsel for the petitioner, submits that the petitioner is falsely implicated without there-being any incriminating material to connect him with his complicity in the commission of the alleged offence. It is according to him that when the petitioner filed an application under Section 457 of the Code for interim custody of the vehicle, the learned Magistrate made an

endorsement on 10.01.2017 returning the application stating that the same is not maintainable, as the Court has no jurisdiction to entertain the application. The learned counsel would state that after seizure, the vehicle was not produced before the Court or any confiscation proceedings were initiated. On the ground that if the vehicle is kept lying in the police station without using it, there is every likelihood of the vehicle becoming a junk, requests to release the vehicle and that he would abide by any of the conditions that may be imposed by the Court.

4. The learned Additional Public Prosecutor appearing for the State of Andhra Pradesh would submit that the concerned authority under the Andhra Pradesh Prohibition Act, 1995 (for short 'the Act 1995') is authorized to deal with the vehicle and the petitioner ought to have approached the authority concerned and, therefore, to dismiss the present petition.

5. The offence alleged to have committed by the petitioner is punishable under Section 7A read with 8 (e) of the Act, 2005, and the case in Crime No.7 of 2017 (wrongly mentioned in the petition as Cr.No.6/2017) of Prohibition and Excise Station, Piler, Chittoor District is registered against the petitioner, who alleged to have found in possession of two polythene covers containing 10 liters of Illicit Distilled Liquor in each cover.

6. Though, the learned counsel pleaded innocence of the petitioner and his false implication, but, *ex facie*, the allegations in the special report would belie that submission. The petitioner herein, in fact, is seeking the relief of release of vehicle, but not quashment of any order passed by the learned Magistrate. The learned Magistrate when an application moved by the petitioner endorsed on it on 10.-01.2017 thus:

“How this petition is maintainable before this Court. This Court has no jurisdiction.”

In fact, if the petitioner is, still, aggrieved, ought to have quoted the relevant provision or decisional law as to the learned Magistrate vests with jurisdiction to entertain the petition. Instead of making such an attempt, he rushed to this Court. The learned counsel has not drawn attention to the relevant provisions of the Act, 1995. Section 13 of the Act, 1995, deals with the ‘confiscation of things by Prohibition and Excise Officers in certain cases. The said section was substituted by Act 35 of 1995, which came into force on 12.10.1995. Section 13E of the Act 1995 bars the jurisdiction of the Court to entertain any application in respect of liquor, any receptacle, package, covering, any animal, cart, vehicle or other conveyance used in carrying such liquor as far as its release, or confiscation is concerned and the jurisdiction of the Deputy Commissioner of Prohibition and Excise or the appellate authority with regard to the disposal of the same shall be exclusive.

7. It would be appropriate to refer to the decision of a Division Bench of this Court in **Shaik Ghani v. The State of Andhra Pradesh**¹. The Hon'ble Division Bench of this Court answering a reference made by a learned Single Judge of this Court in view of conflict between the judgment rendered by a learned Single Judge of this Court in **S. Kareemulla and others v. Prohibition and Excise Sub-Inspector, Nandyal and others**² rendering contrary to the latter judgment rendered by a learned Single Judge of this Court in **M. Basha v. State of Andhra Pradesh**³ with regard to release of vehicle involved in an excise offence by the Magistrate; held that the ratio in **S. Kareemulla's Case** (Supra) is not a good law and it was rendered without noticing the statutory provisions added by the Act 35 of 1995, and held the same as *per incuriam*, while upholding the view expressed in **M. Basha's Case** (Supra), as it is in conformity with the law declared by this Court and the Hon'ble Supreme Court that the Criminal Courts will not have jurisdiction to release the vehicle for interim custody when the matter is seized by the confiscating authority.

8. Now, the question is, whether this Court can release the vehicle by exercising its jurisdiction under Section 482 of the Code for interim release of the property. In **Shaik Ghani's Case** (Supra), the Hon'ble Division Bench of this Court referring to the judgment of

¹. 2007 CrL.L.J. 246

². 1996 (1) ALT 953

³. 1997 (2) ALD (Cri) 473 (AP)

the Hon'ble Supreme Court in **State of West Bengal v. Sujit Kumar**

Rana⁴ stated in paragraph No.9 thus:

“9. In State of W. B. v. Sujit Kumar Rana , the Supreme Court while considering [Section 59-G](#) of the Forest Act as amended by [West Bengal Act 22](#) of 1988, which is identical to [Section 13\(E\)](#) and also various judgments rendered by it, and approving the decision of a Division Bench held that once the confiscation proceeding is initiated, the jurisdiction of the criminal Court in terms of 59-G of the Forest Act being barred and the High Court also cannot exercise its jurisdiction under [Section 482](#) of the Code of Criminal Procedure for interim release of the property, but the High Court can exercise such a power only in exercise of its power for judicial review and set-aside the order passed by the High Court.”

Thus, it is clear that the power under Section 482 of the Code cannot be exercised for interim release of the vehicle. There is no merit in the present petition.

The present Criminal Petition, is accordingly, dismissed at the stage of admission itself. As a sequel thereto, miscellaneous petitions, if any, pending in the petition, stand disposed of.

A. SHANKAR NARAYANA, J

February 13, 2017.

Mgr

⁴. AIR 2004 SC 1851