THE HONOURABLE SRI JUSTICE RAJA ELANGO

WRIT PETITION No.26398 of 2008

ORDER:

This Writ Petition is filed by the petitioners under Article 226 of the Constitution of India seeking to call for the records relating to the order, dated 20.01.2006, in Cr.No.11880/2004/CPE/D4, passed by the 1st respondent, whereby confirming the order, dated 23.06.2003, in Cr.No.C3/6491/2002, passed by the 2nd respondent, whereby confiscating the tanker Lorry bearing No.AP 23T 2158 together with 12.9 metric tones of molasses and quash the same by holding the orders passed by the respondents herein as illegal, without jurisdiction and consequently direct the respondents to return the Tanker Lorry bearing No.AP 23T 2158 and quantity of 12.9 metric tones of molasses with damages.

2. Heard the learned counsel for both the parties and perused the material available on record.

3. The brief facts of the case that the 1st petitioner is the owner of the tanker lorry bearing No.AP 23T 2158 and plying the same on hire and the 2nd petitioner engaged the said lorry for transportation of 12.9 metric tones of molasses from Ramakrishna Khandsari Sugar Factory, Toopran, Medak District and that on 25.12.2002, when the 1st petitioner got loaded vehicle with 12.9 metric tones of molasses, the Prohibition and Excise Inspector, Prohibition & Excise Station, Secunderabad, seized the lorry of the 1st petitioner together with molasses on the allegation that the molasses in the transit is meant for preparation of I.D. liquor and arrested the driver and cleaner of the said vehicle and that the 3rd

respondent registered a case in Cr.No.187 of 2002-2003 under Section 34(E) of the A.P. Excise Act and that after filing of the charge sheet, the same was numbered as C.C.No.838 of 2004, on the file of the XI Additional Chief Metropolitan Magistrate, Secunderabad and on full fledged trial, the learned Magistrate convicted the accused, who are driver, cleaner and owner of the molasses under Section 34(e) of the A.P. Excise Act and sentenced them to suffer Rigorous Imprisonment for a period of six (6) months and imposed a fine of Rs.5,000/- with default clause. On filing an appeal by the accused vide Crl.A.No.17 of 2007, on the file of the Metropolitan Sessions Judge, Hyderabad, the learned Judge allowed the said appeal vide judgment, dated 04.07.2007, and set aside the conviction as well as the sentence of imprisonment imposed upon the accused. While so, the 2nd respondent issued a show cause notice, dated 09.01.2002, to the petitioner calling for explanation as to why the said vehicle should not be confiscated to the State and the petitioner submitted explanation within the time stipulated therein, but the 2nd respondent, without appreciating the explanation submitted by the petitioner to the show cause notice, dated 09.01.2002, illegally confiscated the tanker lorry together with molasses by an order, dated 23.06.2003. The 1st petitioner filed an appeal before the 1st respondent challenging the said proceedings, dated 23.06.2003. The 1st petitioner also filed W.P.No.9595 of 2004 before this Court, whereby this Court by an order, dated 17.06.2004, in W.P.M.P.No.12150 of 2004 in W.P.No.9505 of 2004, directed the respondents not to sell the said vehicle together with molasses seized in Cr.No.187/2002-2003 and subsequently, the writ petition was disposed of directing the appellate authority to dispose of the appeal and the 1st respondent passed orders on 20.02.2006 by dismissing the appeal filed by the 1st petitioner and confirmed the orders passed by the 2nd respondent, dated 23.06.2003. Aggrieved by the same, the present writ petition is filed by the petitioners.

4. The point for consideration in this writ petition is whether an offence of transportation of molasses pertaining to the year 2002 will give right to the respondents to seize the above said vehicle and confiscate the same.

5. As per the judgment of a Division Bench of this Court in W.A.No.2209 of 1998 and batch, dated 08.05.2002, and also judgments of single Judges of this Court in Criminal Petition Nos.6209 of 2004, 3550 of 2001 and W.P.No.5712 of 1998, it is decided that transportation of molasses is not an offence under any law and it will not come under the purview of the A.P. Excise Act, 1968, since transportation of molasses is not an offence unless there is some other reliable evidence to the effect that the lorry was transporting molasses for the purpose of illicit liquor. Though the lacuna was pointed out repeatedly, the State did not take any steps to make any legislation imposing restrictions on the transportation of molasses without proper permission from the authorities concerned.

6. The main contention of the respondents is whether the bills produced by the petitioners are fake in nature and as such the petitioners committed an offence of transportation of molasses in the above said vehicle and that the said vehicle is liable to be confiscated.

7. As far as the way bills are concerned, the same will not come under the purview of the A.P. Excise Act, 1968, but it will fall under the provisions of other laws and there is also no provision for confiscation of the vehicle.

8. Considering the said facts and circumstances of the case and also the fact that transportation of molasses will not come within the purview of the A.P. Excise Act, 1968, the order of confiscation, dated 23.06.2003, in Cr.No.C3/6491/2002, passed by the 2nd respondent, which was confirmed by the appellate Court i.e., 1st respondent, in order, dated 20.01.2006, in Cr.No.11880/2004/CPE/D4, is liable to be set aside.

9. Accordingly, the Writ Petition is allowed and the order of confiscation, dated 23.06.2003, in Cr.No.C3/6491/2002, passed by the 2nd respondent, which was confirmed by the appellate Court i.e., 1st respondent, in order, dated 20.01.2006, in Cr.No.11880/2004/CPE/D4, is liable to be set aside. There shall be no order as to costs.

Consequently, miscellaneous petitions, if any, pending in the writ petition shall stand closed.

RAJA ELANGO, J

Date: 3rd August, 2017

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