

THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.13198 of 2010

ORDER :

The petitioners are the A.1 and A.2 of Cr.No.102 of 2010 of Nadendla Police station of Guntur District. The 2nd respondent/ defacto-complainant is the then Tahasildar of Nadendla Mandal. The crime registered is for the offences u/ sec.188 and 420 IPC, Sec.192 of the Motor Vehicles Act, Section 3 r/w 7 of the Essential Commodities Act, on the report of the 2nd respondent/ defacto-complainant dated 15.08.2010 which reads pursuant to the instructions and orders of the Joint Collector, Guntur District, Revenue Divisional Officer, Narasaraopet, District Supply Officer, Guntur, Tahasildar, Nadendla that Eethrram Public School using the blue kerosene oil meant for Public Distribution System as fuel to the buses for transporting school children, on 14.08.2010 at about 4.00 P.M., he went to the school premises by surprise visit and found two buses parked in the school premises and on verification one of the new bus filled with diesel and the another one bearing No.AP7T 5940 was filled with blue kerosene oil, the driver of the bus available there was one Svarathri Kondal Rao, blue kerosene oil from the bus was extracted and it was 38 litres o measurement and as use of the blue kerosene under public distribution system as a fuel of the bus is violative of the provisions of A.P.Petroleum Products (Licensing and Regulation of Supplies) Order-1980 [for short, 'the APPP(L&R of S) Order, 1980'] and seized the vehicle under cover of panchanama, hence requested to take

action. At the time of inspection and seizure under panchanama, statement of driver Kondala Rao was recorded so also that of one Santyanrayana, Manager of the School and therefrom the crime is registered.

The contentions in the quash petition as well as the submissions of the counsel for the petitioner are that from none of the averments any offence referred in the FIR against the petitioners is made out and there is no basis for the complaint much less to register a crime and the crime proceedings are liable to be quashed. Heard the learned Public Prosecutor representing the respondents and perused the material.

Among the offence supra for which the crime registered, so far as Section 188 IPC is concerned, there must be disobedience to an order lawfully promulgated by a public servant and such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both; and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. Here, there is a bar for the offence u/ sec.188CrPC by virtue of Section 195(1)Cr.P.C. to register a

crime except that on a private complaint. Thus even though the Tahasildar is a public servant, the registration of the crime by police ultimately for filing final report to take cognizance is no way sustainable.

So far as Section 192 of the M.V.Act is concerned, this Section applies for using of vehicle without registration which says Whoever drives a motor vehicle or causes or allows a motor vehicle to be used in contravention of the provisions of section 39 shall be punishable for the first offence with a fine which may extend to five thousand rupees but shall not be less than two thousand rupees for a second or subsequent offence with imprisonment which may extend to one year or with fine which may extend to ten thousand rupees but shall not be less than five thousand rupees or with both: Provided that the Court may, for reasons to be recorded, impose a lesser punishment and nothing in this section shall apply to the use of a motor vehicle in an emergency for the conveyance of persons suffering from sickness or injuries or for the transport of food or materials to relieve distress or of medical supplies for a like purpose. Section 39 of the Act, speaks about necessity for registration that no person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place unless the vehicle is registered in accordance with this Chapter and the certificate of registration of the vehicle has not been suspended or cancelled and the vehicle carries a registration mark displayed in the prescribed manner, provided that nothing in this section shall

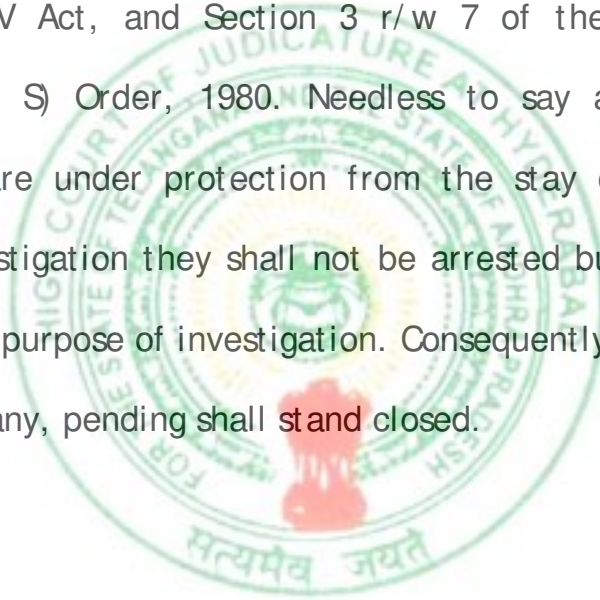
apply to a motor vehicle in possession of a dealer subject to such conditions as may be prescribed by the Central Government.

It is a case of the vehicle in which the so called blue kerosene filled in the fuel tanks is a registered one. The registration number itself is mentioned in the report. There is nothing to show from the report in registering crime of the vehicle, registration specifically says it is only diesel to be used no other fuel to be used as the part of registration to say therefrom in violation of Section 192 of the M.V. Act and in the absence of which Section 192 MV Act, has no application though it is no doubt a matter for investigation to ascertain whether the vehicle registration mentions use of the fuel exclusively is diesel but not kerosene.

Coming to the offence u/ sec. 420 IPC, the vehicle if at all can be run with a fuel and the fuel used even found is the blue kerosene might be meant for public distribution, filling of fuel tank in use to be itself an offence of cheating for not a case of a person who supplied the blue kerosene so cheated with deception to have wrongful gain. If it is not only the person knowing the same of the blue kerosene drawn from a distributor sold as fuel to the vehicle or given as a fuel to the vehicle and taken there is no offence of cheating and it is not even a case of ascertaining from whom purchased and that person drawn kerosene for personal consumption of domestic use as a fuel for the lights or stove and sold or given to use of a fuel in the bus thereby he committed

offence of cheating and consequently the petitioners are privy to it. Thus there is no attracting of offence u/ sec.420 IPC. However, so far as other violation mentioned of the APPP(L&R of S) Order, 1980 of the amended order subsequent to it as on the date of alleged commission of offence on 15.08.2010 and section 3 r/w 7 of the E.C.Act concerned, it is a matter to investigate.

Having regard to the above, the Criminal Petition is allowed in part quashing the proceedings in Cr.No.102 of 2010 supra for the offences u/ sec.188 and 420 IPC but not insofar as the offence u/ sec.192 MV Act, and Section 3 r/w 7 of the E.C. r/w the APPP(L&R of S) Order, 1980. Needless to say all through the petitioners are under protection from the stay of investigation pending investigation they shall not be arrested but for to secure them for the purpose of investigation. Consequently, miscellaneous petitions, if any, pending shall stand closed.



Dr. B.SIVA SANKARA RAO J,

Date:13.09.2017
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