

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.36382 of 2017

ORDER:

This Writ petition, under Article 226 of the Constitution of India, is filed by the petitioner seeking verbatim the following relief:

'..to issue an order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the 4th respondent in issuing the impugned (a) show cause notice for suspension of A4 license shop vide Rc.No.281/ 2017/ A2(1) dt.25-10-2017 in suspension of the shop license and (b) show cause notice for cancellation of A4 shop vide G.S.07/ 2017-19, dt.25-10-2017, Nellore Municipality at D.No.28-1-191-1, P.C.Naidu Nagar, Mypadu Road, Nellore Municipal Corporation on the ground a crime was registered against one Thota Venkateswarlu vide FIR No.113/ 2017 dated 02-10-2017 and without considering representation of the petitioner dated 13-10-2017 against the show cause notice dated 09-10-2017 and no regular enquiry before issuance of notice for cancelation of A4 license is illegal, arbitrary, discriminatory and violation of principles of natural justice and without jurisdiction or power, hence the impugned proceedings (a) show cause notice for suspension of A4 license shop vide Rc.No.281/ 2017/ A2(a) dt.25-10-2017 in suspension of the shop license and (b) show cause notice for cancellation of A4 license shop vide G.S.07/ 2017-19, dt.25-10-2017 are liable to be set aside and consequently direct the respondent authorities to continue the petitioner's A4 licence shop for running business vide license No.NL/ 07/ 2017-2019, dt.13-07-2017 as the petitioner has not violated any condition of the A4 License under Rules made under (Grant of license selling by shop and conditions of licence) Rules 2012 as alleged in the impugned proceedings vide Rc.No.281/ 2017/ A2(2), Dt.25-10-2017 and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.'

2. Heard the submissions of *Sri K.Satyanarayana Murthy*, learned counsel for the petitioner, and of the learned Government Pleader representing the respondents. Perused the material record.
3. The case of the writ petitioner, in brief, is as follows: - 'The petitioner is a licence holder for selling liquor by A4 shop notified, after due procedure,

at Gazette No.14 dated 24-03-2017, Serial No.NL/ 7. He was running the business in the name and style as “Dolphin Wines” at premises bearing D.NO.28-1-191-1, P.C. Naidu Nagar, Mypadu Road, Nellore. While so, the 4th respondent issued a show cause notice for suspension of A4 license under Section 31(1) (b) of A.P. Excise Act in Rc.No.281/ 2017, dated 09.10.2017 on the basis of the report of the Station House Officer-I, Nellore, dated 09.10.2017 on the ground that a case was registered in Crime NO.113 of 2017, dated 02.10.2017 under Section 34(a) of the A.P. Excise Act read with Rule 32 against one Thota Venkateswarlu. The petitioner has submitted his explanation denying the allegations made in the show cause notice and requesting to drop further proceedings. However, without considering the explanation in proper perspective, the impugned order was passed by the 4th respondent having come to the conclusion to suspend the operation of A4 shop of the petitioner and accordingly, the 4th respondent suspended the licence of the petitioner A4 shop pending enquiry. The said impugned order of the 4th respondent is arbitrary, not legal and is in violation of principles of natural justice. Though the order was passed after the petitioner has submitted his explanation, the 4th respondent is not justified in passing the impugned order suspending the licence pending further enquiry. The said order is mechanically passed and hence, it is liable to be set aside. The power to suspend the licence is conferred under Section 31 of the A.P. Excise Act. Unless there are violations of any conditions of licence or the provisions of the said Act or the Rules made thereunder, the licence cannot be suspended/ cancelled. It is pertinent to submit that the accused has stated that he has purchased the bottles on various days from the shop of the petitioner and kept in his house to sell the liquor for a higher price. The allegations in the FIR are not true and correct and were invented only for the purpose of cancellation of the license of the A4 shop of the petitioner. Even according to the FIR, there are no labels on 277 bottles or on the boxes. The case in Crime No.113 of 2017 was registered

against one Thota Venkateswarlu only. The petitioner submitted his explanation to the show-cause notice issued by the 4th respondent and specifically stated that he never committed any offence and that he has nothing to do with the stock found in the house of the accused. There are 36 A4 shops and bar licenses existing within Nellore Municipality. There is no evidence to show that the stocks seized by the respondent authorities from the accused were supplied to the shop of the petitioner by the department. There were no labels either on the bottles or on the box seized by the Department. The respondents cannot penalize the petitioner by suspending the licence on the basis of a crime registered against one Thota Venkateswarlu in Crime No.113 of 2017. The distance between the house of the accused and the A4 shop of the petitioner is 1 ½ Kms; and, in between and around the house of the accused, there are two more shops. It is possible for a person to purchase the liquor on different dates. Mere possession of liquor by a third party cannot be a ground for suspending the licence of A4 shop of this petitioner. The order passed by the 4th respondent entails civil consequences and if such order is continued, the petitioner would be put to lot of financial hardship. The 4th respondent while passing the impugned order failed to give reasons much less valid reasons though giving reasons is one of the facets of principles of natural justice. Contraventions of any rule or conditions of licence are not mentioned in the impugned order. Hence the writ petition is filed.'

4. A counter affidavit has been filed on behalf of the respondents resisting the writ petition.

5. At the hearing, learned counsel appearing for the petitioner while reiterating the pleaded case of the petitioner would bring to the notice of the court the relevant portion of the impugned suspension order under the heading 'ORDER' which is at the foot of the said suspension order, dated 25.10.2017, and which reads as under:

'In the reference 5th cited, the Proh. & Excise Superintendent, Nellore has issued show cause notice for suspension in G.S.No.NL/07/2017-19, dated 09.10.2017 and instructed Jampani Vamsi Krishna, licensee of G.S.No.NL/07/2017-19 to submit his explanation within Seven (7) days. In this connection, in the reference 6th cited, Sri Jampani Vamsi Krishna, licensee of G.S.No.NL/07/2017-19, dated 13.10.2017 has submitted his explanation.

The explanation submitted by the licensee is thoroughly examined and found not satisfactory and is not acceptable.

It is evident that, the licensee of G.S.No.07/2017-19, situated at Nellore Municipal Corporation, had violated licensing conditions which is punishable u/s 34(a) of A.P. Excise Act 1968 R/w rule 32 of A.P Excise Act (Grant of License of selling by shop and conditions of License) rules, 2012.

Hence, I, K.Balarama Krishna, Prohibition and Excise Superintendent, Nellore, being the Licensing Authority hereby suspend the shop licence of G.S.no.NL/07/2017-19, Nellore Municipal Corporation U/S 31(1)(b) of A.P. Excise Act, 1968, until further orders, pending enquiry."

He would further contend that from a reading of above portion of the order, it appears that the only ground for the suspension of the licence of the petitioner's A4 shop pending enquiry is that the accused, who was said to have been found in possession of 277 (180 ml) liquor bottles of various brands in 7 card boards and 22 (650 ml) beer bottles of various brands in card board box and plastic bags with one HEALS made a confession and that on interrogation, he confessed that he purchased the same from G.S.No.07/ 2017-19, situated at D.No.30-290-2(A), Satyanarayana puram, Zakir Hussain Nagar, to sell the same at higher prices for unlawful gain and that the said confession shows that the licensee has given scope for unauthorised sale of the liquor. He placed reliance on a decision of this Court in V.P. Thimmaiah v. Commissioner of Prohibition and Excise, Government of Andhra Pradesh, Hyderabad¹ wherein this Court held as follows:

¹ 2001(6) ALD 201

In this case, there is no allegation against the petitioner that he was selling any non-duty paid Indian liquor in loose quantity in his wine shop. In fact, the entire basis for the cancellation order, as noted hereinabove, is that one Mangala Maruthi Prasad, who was the accused in Crime No.47/98-99 of Hindupur Prohibition and Excise Station, confessed on 7-11-1998 that the arrack sachets which were in his possession were supplied by the petitioner. It may be noted here that the petitioner herein is not even an accused in that crime. It is a settled law that a confessional statement of an accused cannot be used against the other accused let alone a person who is not even an accused in that crime.

6. In reply, while reiterating the contents in the counter affidavit, learned Government Pleader forcefully submitted as follows: 'On 02.10.2017, at about 07.10 PM, during the implementation of Dry day on the eve of Gandhi Jayanthi, during the raids conducted by the Prohibition & Excise Sub Inspector, Nellore-I, along with staff, a case was detected at H.No.30-290-2A, Sathyanarayanapuram, Jakeer Hussain Nagar, Nellore, and one (1) male person by name Thota Venkateshwarlu was found in possession of 277 bottles of 180 ml liquor of various brands in seven (7) card board boxes and 22 bottles of 650 ml liquor of various brands in one card board box. The said accused was arrested; samples were drawn and sent for analysis. Basing on the same, a show cause notice, dated 09.10.2017, was issued to the petitioner. The 4th respondent has given a reasonable opportunity to the petitioner at the first instance by issuing a show cause notice vide Rc.No.281/2017/ A2(1), dated 09.10.2017. The petitioner utilized the opportunity by submitting his explanation, on 13.10.2017. Thereafter, as per due procedure of law, in the second instance, the 4th respondent issued a show-cause notice in Rc.No.281/2017/ A2(2), dated 25.10.2017, for suspension of licence of A4 shop of the petitioner. Instead of availing the said opportunity, he has approached this Court with unclean hands. Therefore, it is clear that the petitioner has wilfully violated the provisions of the A.P. Excise Act and licence conditions of A4 shop. Hence, it was felt expedient to suspend the operation of A4 shop of the petitioner pending detailed enquiry into the case. Accordingly, a show cause notice was issued and the explanation/ objections of the petitioner were

received and considered and later the impugned order was passed suspending the licence of the petitioner pending enquiry.'

7. I have gone through the entire material record including the decision cited and I have given earnest consideration to the facts and submissions.

8. At the outset, it is to be noted that the order challenged is in the nature of an interim order as the petitioner's A4 shop licence was suspended with immediate effect pending enquiry into the case. Therefore, this is not a case where a roving enquiry is necessary. Further, it is trite to note that no observations/findings which may have a bearing on the merits of the main matter shall be recorded in this order. Be that as it may. Though the petitioner is not arraigned as an accused in the crime, the investigation into the said crime is in progress. As rightly contended by the learned counsel, mere confessional statement of an accused in a crime cannot be taken to be a conviction whereby it could be said that the said accused had committed an offence. The only material at this stage which the Prohibition & Excise Superintendent considered while passing the suspension order is that the accused in the crime made a confession that he purchased the liquor bottles from the petitioner's A4 shop. The petitioner already submitted his explanation/objections to the show cause notice. In the impugned order, a far reaching observation is made that the petitioner's explanation is not upto the satisfaction and from that finding, as rightly contended, it appears that the Prohibition & Excise Superintendent has prejudged the issue even while passing an interim order of suspension pending enquiry; and if that is so, what would be the enquiry that remains to be conducted remains a moot question and the answer to the said question is obvious and not obscure. Further, under the settled legal position, a confessional statement of an accused cannot be used against another third party let alone a person who is not even arraigned as an accused in the crime. Therefore, on the mere fact that the accused in the crime made a statement against the petitioner, there cannot be an assumption

at this stage *prima facie* that the petitioner supplied those liquor bottles or some of those liquor bottles to the said accused in the crime for unauthorised sale. The said aspect has to be decided after a full fledged enquiry into the matter. Further, except stating that explanation is not up to the satisfaction, no reasons much less valid reasons are assigned in support of the said finding by dealing in detail with the various submissions in the explanation or objections of the petitioner though such an exercise is necessary. Since the enquiry is kept pending, the far reaching finding in the impugned interim order that the explanation is not satisfactory is unwarranted.

9. On the above analysis, this Court finds that there is an acceptable merit in the contentions of the writ petitioner and that the contentions raised by the respondents, at this stage, are untenable. Learned counsel for the petitioner, however, brings to the notice of this Court that if this writ petition is disposed of setting aside the impugned order with a direction to the authority concerned to dispose of the main matter by taking an appropriate decision in the matter, the ends of justice would be met.

10. In the result, the Writ Petition is allowed and the impugned order is set aside. Accordingly, the 4th respondent is directed to conduct an enquiry as contemplated under law and pass appropriate reasoned orders in the matter as expeditiously as possible, after affording an opportunity of hearing to the petitioner, however, without being influenced by the observations in the order, which is now set aside and also the observations, if any, in this order.

Miscellaneous petitions pending, if any, in this writ petition shall stand closed. No costs.

M. Seetharama Murthi, J

Date: 13.11.2017

Note:- Issue CC by 14.11.2017
(B/o)
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