THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.36768 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 a writ of mandamus or any other appropriate writ or direction declaring the order of the 4th respondent passed in RC.No.150/2017/A1 dated 31.10.2017 as illegal, arbitrary and is in violation of principles of natural justice and one without jurisdiction and pass such other or further orders as the Hon'ble Court feels deem fit and proper in the facts and circumstances of the case.'

2. Heard the submissions of Sri O. Manohar Reddy, learned senior 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 Serial No.199. However, on a report submitted by the 5th respondent to the 4th respondent, the 4th respondent came to a conclusion that the petitioner had sold 48 bottles of liquor out of 172 bottles of liquor to an unlicensed person and further violated Rule 35 of A.P Excise (lease of right of selling by shop and conditions of licence) Rules, 2012, and that the sale of liquor by the petitioner in excess of permissible quantity to an unlicensed person is in violation of rules and license conditions and that for the said misconduct initiation of appropriate action under law is necessary. The 4th respondent, having come to the conclusion to suspend the operation of A4 shop by the petitioner, issued a show cause notice requiring the petitioner to show cause within seven days as to why the licence should not be suspended. The petitioner submitted an explanation denying the allegations levelled against him and *inter alia* pleaded in his explanation/objections that neither he nor his Nowkarnama holder know the 1st accused and that the 1st accused has not

purchased any liquor from his shop and that when he enquired in the village, he came to know that the 1st accused was running a belt shop, and therefore, requested to drop further proceedings in the matter. The 4th respondent without considering the explanation in proper perspective came to a conclusion that the explanation of the petitioner is not satisfactory and passed the impugned order only on the basis of the confessional statement of the 1st accused observing that the licencee, that is, the petitioner has given scope for unauthorised sale; and, basing on such conclusions, the 4th respondent suspended the licence 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 place where the said person was found in possession of the liquor is located at a distance of 8 KMs and in between there are 2 shops. There is no prohibition for selling 6 nips in one transaction. 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 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. Though no counter has been filed, learned Government Pleader orally resisted the writ petition.

5. At the hearing, learned senior 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 'O R D E R' which is at the foot of the said suspension order, dated 31.10.2017, and which reads as under:

> 'In the reference 5th cited the said Licensee submitted his explanation stating that neither he nor his Nowkarnama holders supplied liquor stocks to any unauthorised outlets, which is not satisfactory.
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> In view of the above, by virtue of powers vested in me under Section 31(1)(b) of A.P. Excise Act, 1968, the Licence in Form – A4, bearing Licence No.04-199/2017-19 located at Door No.5-60 Garugubilli Village of Garugubilli Mandal held by him is hereby suspended until further orders pending further investigation and inquiry in public interest."

He would further contend that from a reading 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 1st accused, who was said to have been found in possession of 172 nips (180 ml) liquor bottles (i.e., 48 nips (180 ml) of HD Heaven's Door Whisky bottles, 34 nips (180 ml) of HD Heaven's Door Whisky bottles, 18 nips (180 ml) Gold Riband Elite Whisky bottles, 48 nips (180 ml) Officers Choice Reserve Whisky bottles, 19 nips (180 ml) of HD Heaven's Door Whisky bottles and 05 (180 ml) Imperial blue classic grain Whisky bottles) of duty paid liquor, made a confession and that on interrogation, he confessed that he bought 48 liquor bottles from the A4 shop of the petitioner to sell the same at higher prices for unlawful gain and that the said confession shows that the licencee 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, Hyderabad[1] wherein this Court held as follows:

> 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 learned Government Pleader would forcefully submit as follows: 'The 4th respondent has taken action on the report of the 5th respondent. The said report discloses that, on 14.10.2017, the Inspector concerned along with staff and mediators conducted a raid in front of the house of Bathula Ramesh S/o. Sriramulu (A1) and detected that the said person was in possession of 172 bottles of duty paid liquor and that on interrogation he revealed that he bought 48 liquor bottles from M/s.Prasad Wines, that is, the A4 shop of the petitioner to sell the same at higher price for unlawful gain. Thus, the report disclosed that the petitioner's A4 shop has sold 48 nips (180ml) of HD Heaven's Door Whisky to the 1st accused person and has given scope for unauthorised sale of liquor and that the petitioner violated the relevant rule of A.P. Excise rules, 2012 and other conditions. Therefore, it is clear that the petitioner has wilfully violated the provisions of the E.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. In the afore-stated facts and circumstances of the case, the cited decision has no application to the facts of the present case as in the present case the shop of the petitioner is also arraigned as fourth accused in the crime in which the first accused made a

[1] 2001(6) ALD 201

confessional statement. The order impugned is only an interim suspension order 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 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 also arraigned as an accused in the crime, the investigation into the said crime is in progress. As rightly contended by the learned senior counsel, mere arraignment of the petitioner as an accused in a crime cannot be taken to be a conviction whereby it could be said that the petitioner had committed an offence. The only material at this stage which the Prohibition & Excise Superintendent considered while passing the suspension order is that the 1st accused made a confession that he purchased 48 nips of 180 ml liquor bottles from the petitioner A4 shop. The petitioner already submitted his explanation or 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 accused let alone a person who is not even arraigned as an accused in the crime. Therefore, the mere fact that in the crime related to the present matter the petitioner is arraigned as a co accused along with A1,

who made a confessional statement, is not going to make a difference to the case of the petitioner herein and that on the mere fact that he was arraigned as an accused in the crime there cannot be an assumption at this stage *prima facie* that the petitioner supplied those liquor bottles or some of those liquor bottles to A1 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 acceptable merit in the contentions of the writ petitioner and that the contentions raised by the respondents, at this stage, are untenable. Learned senior 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 Murti, J

Date: 09.11.2017
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