THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Appeal No. 265 of 2018

Judgment: **(Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)**

Heard learned Government Pleader for Prohibition and Excise and Sri S. Vijaya Prashanth, learned counsel for the appellant-writ petitioner and, with their consent, the Writ Appeal is disposed of at the stage of admission.

This appeal is preferred, by the respondents in W.P. No. 40645 of 2017, aggrieved by the order passed by the learned Single Judge on 18.1.2018. The respondent herein filed W.P. No. 40645 of 2017 to call for the records in the proceedings of the Commissioner of Prohibition and Excise dated 13.10.2017, affirming the order passed by the Deputy Commissioner of Prohibition of Excise for confiscation of the subject vehicle as arbitrary and illegal, and to quash the same.

On the ground that the subject vehicle was found to be carrying 400 kgs, of black jaggery and 50 kgs, of alam, the said vehicle was seized on 1.10.2016; and a case was registered, for the offence under Section 34(e) of the Andhra Pradesh Excise Act, 1968 (hereinafter referred to as "the Act"), by the Station House Officer, Achampet. Thereafter the Deputy Commissioner confiscated the vehicle along with the contraband. The respondent-writ petitioner preferred an appeal thereagainst which was dismissed by the Commissioner of Prohibition and Excise by proceedings dated 13.10.2017, questioning which W.P. No. 40645 of 2017 was filed.

In the order under appeal, the learned Single Judge observed that possession of black jaggery or its transportation was *per se* not an offence; black jaggery and alam were seized when they were being transported in the vehicle which was subsequently confiscated; the subject vehicle was not liable for confiscation; and the order of the Commissioner, impugned in the Writ Petition, was liable to be set aside.

Taking note of the fact that an interim order was passed in the Writ Petition, granting interim custody of the confiscated vehicle on condition that the respondent-writ petitioner furnished a fixed deposit of Rs.2.00 lakhs, and immovable property security for the balance amount of Rs.7.00 lakhs, the learned Single Judge directed the appellant-respondents to return the said fixed deposit receipt to the respondent-writ petitioner, and release the immovable property security, in view of the order in the Writ Petition.

Learned Government Pleader for Prohibition and Excise, while placing reliance both on the judgment of the Supreme Court in **Commissioner of Prohibition and Excise vs. Shaik Mohammed**[1] and the Full Bench Judgment of this Court in **Ganesh Traders vs. District Collector, Karimnagar**[2], would submit that the panchanama report, which records the admission of the accused that the vehicle was being transported for delivery to a person who manufactures illicit liquor, would suffice for seizure of the vehicle and the goods being transported therein.

In **Ganesh Traders**[2] a Full Bench of this Court observed that, if the Commissioner, Collector, Police Officer or Excise Officer, has reason to believe that black jaggery (material) is likely to be used for the manufacture of ID liquor, the same can be seized, and persons could be arrested; and subject to the facts and circumstances of each case, including any report of the Chemical Examiner, a charge sheet could be filed under Section 34(e) of the Act.

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[1] Criminal Appeal No. 539 of 2006 dated 17.1.2013
[2] 2002(1) ALD 210

In **Shaik Mohammed**[1], the Supreme Court held that, in view of Section 45(3) of the Act, the liability of the owner of the vehicle was absolute and strict; and this was irrespective of whether *mens rea* of the owner was established or not.

In the present case, the order records that the seized black jaggery is unfit for human consumption. The panchanama report also records that these goods were being transported for delivery to a lady for manufacture of illicit liquor. The satisfaction of the authorities, that the black jaggery seized was likely to be used for manufacture of I.D. liquor, is evident from the aforesaid proceedings; and would justify seizure of these goods.

The next question which necessitates examination is whether the authorities were justified in passing an order of confiscation of the vehicle and the goods. Sri S. Vijaya Prashanth, learned counsel for the respondent-writ petitioner, would place reliance on Section 46-A of the Act to submit that no order of confiscation can be passed without giving the accused an opportunity of being heard. Though the respondent-writ petitioner filed his objections to the show cause notice, both the original order and the appellate order record that no objections were filed by the respondent-writ petitioner. Sri S. Vijaya Prasanth, Learned counsel for the respondent-writ petitioner, would submit that the material papers, enclosed along with the Writ Appeal, itself contain the respondent-writ petitioner's reply to the show cause notice.

Section 46-A of the Act stipulates that no order of confiscation of any property shall be made under Section 46, unless the person from whom the said property is seized (a) is given a notice in writing informing him of the grounds on which it is proposed to confiscate such property;

and (b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice.

While it is not in dispute that a notice was issued to the respondent-writ petitioner, the order passed by the Deputy Commissioner of Prohibition and Excise (original authority) dated 19.6.2017 records that, though the show cause notice was served on 2.6.2017, the owner of the vehicle and the accused had failed to submit their explanation within the stipulated time, and not even till date though the respondent-writ petitioner had submitted a reply to the show-cause notice.

Learned Government Pleader for Prohibition and Excise does not dispute that the respondent-writ petitioner had filed his explanation to the show cause notice. Consequently, the finding recorded by the Deputy Commissioner, that no reply was filed by the accused, is evidently perverse. As the order of the original authority is in violation of Section 46-A of the Act, in as much as the objections filed by the respondent-writ petitioner have not been considered by the Deputy Commissioner, the order of the original authority, (and that of the appellate authority affirming the said order), must be, and are accordingly, set aside. The fact however remains that, since the orders are set aside on the ground that the respondent-writ petitioner's reply to the show cause notice has not been considered, the learned Single Judge ought to have directed the Deputy Commissioner, Prohibition and Excise to pass an order afresh after considering the objections filed by the respondent-writ petitioner. We are satisfied that the learned Single Judge could not have directed release of the vehicle, and the security furnished by the respondent-writ petitioner, without giving the appellants an opportunity to pass an order afresh in accordance with Section 46-A of the Act.

We consider it appropriate, therefore, to modify the order of the learned Single Judge, and direct the third appellant to consider the respondent-writ petitioner's reply to the show cause notice and pass an order afresh in accordance with law within two months from the date of receipt of a copy of this order.

As the respondent-writ petitioner had the benefit of his vehicle being released in his favour, during the pendency of the Writ Petition, on his furnishing a fixed deposit receipt for Rs.2.00 lakhs and security of immovable property of Rs.7.00 lakhs; and as, on the Writ Petition being allowed, the authorities have handed over the fixed deposit receipt and the immovable property security to him while retaining the vehicle with them, we consider it appropriate to direct the appellants to release the subject vehicle forthwith on the respondent-writ petitioner handing over a fixed deposit receipt of Rs.2.00 lakhs, and security of immovable property for Rs.7.00 lakhs, to the Deputy Commissioner. Needless to state that the fixed deposit receipt submitted, and the security of immovable property furnished, by the respondent-writ petitioner shall be subject to the orders to be passed by the Deputy Commissioner in compliance with Section 46-A of the Act.

The Writ Appeal is disposed of accordingly. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(KONGARA VIJAYA LAKSHMI, J)

22nd February, 2018

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THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Appeal No. 265 of 2018

Date: 22.2.2018

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