

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Petition No.22639 of 2009

Order:

This Writ Petition is filed to declare the order of the first respondent – Commissioner, Prohibition and Excise, Hyderabad, passed in Cr.No.17600 of 2006/CPE, dated 17.01.2008, confirming the order of the second respondent – Deputy Commissioner, Prohibition and Excise, Anantapur, passed in Rc.No.243/2006/B2, dated 16.10.2006, as illegal and arbitrary and consequently direct the respondents to refund the security furnished by the petitioner at the time of interim release of the vehicle.

The case of the petitioner, in brief, is that he is the owner of the lorry bearing registration No.KA04-A-5026 and he was using the said vehicle for transporting the raw material and finished product of his factory; on 09.04.2006 the third respondent – Prohibition and Excise Inspector, Hindupur, Anantapur district, while conducting the vehicular check at Kodikonda Check-post, has seized the said vehicle on the ground that 1200 arrack sachets in three white plastic polythin bags along with other goods were being transported in the said vehicle and registered a case in Crime No.11/2006-07, under Section 7(a) read with Section 8(e) of the AP Prohibition Act; the vehicle was sent to Bangalore for transportation of the mineral powder and the driver and cleaner, without the authorization of the petitioner, have loaded certain goods in the return journey; on the application made by the petitioner, the second respondent - Deputy Commissioner, Prohibition and Excise ordered for interim custody of the vehicle on condition of depositing Rs.2,25,000/-; against the said order the petitioner filed W.P.No.10109 of 2006, wherein this Court

directed the petitioner to furnish bank guarantee for a sum of Rs.1,00,000/- and to furnish third party security for the remaining amount to the satisfaction of the second respondent – Deputy Commissioner, Prohibition and Excise; he complied with the said order and the vehicle was released; thereafter, after issuing a show cause notice dated 19.04.2006 calling upon the petitioner to show cause as to why the vehicle should not be confiscated to the Government, the second respondent passed the order dated 16.10.2006 directing the Station House Officer, Uravakonda to seize the vehicle from the petitioner; aggrieved by the said orders, the petitioner filed an appeal before the first respondent - Commissioner, Prohibition and Excise, Hyderabad and the first respondent, by impugned order dated 17.01.2008, confirmed the order of the second respondent; aggrieved by the same, the petitioner filed the present writ petition.

This Court, while admitting the writ petition on 22.10.2009, granted interim order staying all further proceedings including encashment of Bank guarantee and invocation of third party security furnished by the petitioner in pursuance of the confiscation order and the order passed by the appellate authority confirming the same.

Counter affidavit has been filed by the respondents along with vacate stay petition reiterating the facts as mentioned in the writ affidavit with regard to seizure of the vehicle, giving the vehicle to the petitioner for interim custody and subsequent orders passed by the respondents 1 and 2 confiscating the vehicle to the Government and stating, *inter alia*, that pursuant to the orders passed by the second respondent, the third respondent submitted a report on 04.09.2009 stating that neither the vehicle nor the petitioner could be traced and based on the said report the

amount of Rs.1,00,000/- was remitted to the Government and further a notice was issued to the persons who furnished third party surety to pay Rs.1,25,000/- as the petitioner failed to produce the vehicle.

Heard learned counsel for the petitioner and learned Government Pleader for Prohibition and Excise.

The main contention of the learned counsel for the petitioner is that the petitioner has no knowledge of the vehicle being used by his driver for illegal transportation and, therefore, the impugned order is liable to be set aside and in support of his contention he relied upon a decision reported in P. Gokul Anand v. Deputy Commissioner of Prohibition and Excise, Hyderabad¹. On the other hand, the contention of the learned Government Pleader is that the knowledge of *mens rea* of the owner of the vehicle is immaterial for the purpose of confiscation of the vehicle involved in excise offence and in support of his contention he relied upon a decision of the Hon'ble Supreme Court in Commissioner, Prohibition and Excise, A.P., v. Sharana Goudam (Appeal (Crl) No.1137 of 2002, dated 05.06.2007).

In view of the contentions raised by the learned counsel, the only question that arises for consideration in this writ petition is whether *mens rea* was required to be established by the respondents.

In Sharana Gouda's case (supra), relied upon by the learned Government Pleader, the Hon'ble Supreme Court observed as follows:

“7. The only question for consideration is whether mens rea was required to be established by the appellant. In this connection Section 45 of the Act needs to be noted. There was originally a proviso to sub-section (2) thereof. The said proviso was omitted by Andhra Pradesh Act 4 of 1994 w.e.f. 26.11.1993. Section 45 after the omission of the proviso reads as follows:

¹ 2002(2) ALD (Crl) 201 (AP) (FB)

"45 Liability of certain things to confiscation: - Whenever an offence has been committed, which is punishable under this Act, following things shall be liable to confiscation, namely :-

(1) any intoxicant materials, still, utensil, implements, or apparatus in respect of or by means of , which such offence has been committed:

(2) any intoxicant lawfully imported, or transported, manufactured, had in possession, sold or brought along with, or in addition to any intoxicant liable to confiscation under clause (1); and (3) any respectable, package, or covering in which anything liable to confiscation under clause (1) or clause (2), is found, and the other contents, if any, of such receptacle, package or covering and any animal, vehicle, vessel raft or other conveyance used for carrying the same"

8. The proviso which has been omitted reads as follows:

"Provided that, if anything specified in clause (3) is not the property of the offender, it shall not be confiscated if the owner thereof had no reason to believe that such offence was being or was likely to be committed."

9. The effect of omission of the proviso does not appear to have been considered by the High Court. When the proviso was part of the statute, it was provided that any thing specified in clause (3) of Section 45 is not the property of the offender, it shall not be confiscated if the owner thereof had no reason to believe that such offence was being or was likely to be committed. At that stage there was a prohibition on confiscation if owner of the property in question had no-reason to believe that such offence was being or was likely to be committed. This was the position if offender was not the owner of the property. The position has changed after omission of the proviso. The High Court does not appear to have kept this aspect in view. Therefore, the impugned judgment of the High Court is indefensible and is set aside.

10. The appeal is allowed."

From the judgment of the Hon'ble Supreme Court, it is clear that knowledge of *mens rea* of the owner of the vehicle is immaterial for the purpose of confiscation of the vehicle. In the circumstances, I see no reason to interfere with the orders passed by the respondents 1 and 2.

The Writ Petition fails and is, accordingly, dismissed. There shall be no order as to costs.

As a sequel thereto, the miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

KONGARA VIJAYA LAKSHMI, J.

Date: 14.11.2018

Nsr



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