HONOURABLE SRI JUSTICE P. KESHAVA RAO

CRIMINAL PETITION No. 12741 of 2010

ORDER:

Heard the learned counsel for the petitioner and the learned Public Prosecutor for the respondents.

The petitioner-A-5 filed the present criminal petition to quash the proceedings initiated against him in C.C.No.56 of 2009 on the file of the Judicial Magistrate of First Class, Kanigiri for the offence punishable under Section 34(a) and 36(c) of A.P. Excise Act r/w Rule 33 of A.P. Excise (Lease of Right of Selling by Shop and Conditions of Licence) Rules, 2005.

The facts of the case are that on the intervening night of 4.9.2008 and 5.9.2008 at about 1.30 a.m., on the credible information from the Prohibition & Excise Superintendent, Markapur, the Prohibition & Excise Inspector I/c. E.S. Task Force, Markapur , Sri K.Prabhakara Rao and his staff reached the scene of offence and found one jeep bearing No. AP-26-U-7607 coming from Kanigiri Town. On suspicion they stopped the said jeep with the help of the staff. On such event, when the jeep driver and other two persons tried to escape, they were detained with the help of the staff. On interrogation it was disclosed that the said jeep belongs to A-4 and A-1 was working as driver and A-2 and A-3 loaded the IML boxes into the said jeep at M/s. Sumithra Wines on Kanigiri main road and the said boxes were being taken for sale among Kanigiri mandal villages. The said IML shop is being run by A-4 on benami name.

A-4 who is the owner of the jeep has given Rs.400/- each to A-1 to A-3 and instructed them to supply the stock among the villages from the said IML shop. In those circumstances, Sri T.Nagamalleshwara Rao, Prohibition & Excise Sub-Inspector, Kanigiri who was examined as PW-5 obtained one bottle from each IML/Beer cases for chemical analysis and the remaining bottles were closed and affixed seals with identity slips. Thereafter, he registered the said mediators' report as case in PR No.123/08-09 under Section 34(a) of A.P. Excise Act against A-1 to A-4. After investigation, a charge sheet was filed. Since the whereabouts of the petitioner are not traced, he was shown as absconding and charge sheet was filed. In the charge sheet it is mentioned that during the course of investigation, Sri V.Anil Kumar, Prohibition & Excise Inspector inspected M/s. Sumithra Wines and verified IML stock with reference to the transport permits and the seized transport permits and found that the contraband seized in this case were found supplied to M/s. Sumithra Wines, Kanigiri. On further enquiry, it was found that A-4 is having benami connections with the licence holder of M/s. Sumithra Wines (A-5) and paid Rs.5 lakhs towards benami rights of the said shop. Based on the allegations in the charge sheet, the Judicial Magistrate of First Class numbered the case as C.C.No.56 of 2009. Aggrieved by the same, the present criminal petition is filed.

Learned counsel appearing for the petitioner would contend that the petitioner is innocent of the charges levelled against him and he has been falsely implicated by the second respondent for statistical purpose. The petitioner is the licensee of M/s. Sumithra

Wines and he never indulged in any sort of clandestine business. He has nothing to do with the other accused or the jeep in which the said contraband was being transported and he was involved in the case only on the confession made by the driver of the jeep (A-1). He also brought to the notice of this Court that he being a licensee of M/s. Sumithra Wines, sale of IML is not an offence. Further, except the allegation that the seized contraband was loaded from his shop, there is no other allegation against the petitioner. As such, no prima facie case is made out and continuation of proceedings against the petitioner would amount to abuse of process of law. During the course of arguments, the learned counsel also brought to the notice of this Court that on an elaborate trial, in C.C.No.56 of 2009, A-1 to A-4 were found not guilty for the offence punishable under Section 34(a) of A.P. Excise Act and accordingly they were acquitted under Section 248(1) Cr.P.C. He placed a copy of the judgment in the said calendar case. A perusal of the said judgment would reveal that the prosecution miserably failed to prove the guilt of A-1 to A-4 in any aspect much less for attracting an offence under Section 34(a) of the A.P. Excise Act. The evidence let in by the prosecution through PWs.1 to 7 indicate that there is no proof of document to say that the seized liquor bottles belongs to the shop of A-5 and that A-4 has sold away the property to A-1 to A-3. Further, PW-5 cannot say on which direction the place of offence is situated from their police station. He has not issued any notice to the accused either to produce permit or licence or any bill and they have not issued any receipt to the accused with regard to seizure of liquor and jeep from them. Further, the relevant portion from the said judgment is as under:

> "All the witnesses are Excise police officials PWs.1 to 7 deposed that they did not serve any receipt after seizing the property MOs.1 to 10 from A-1 to A-3. They did not follow Section 100 Cr.P.C. procedure at the time of arrest of the accused even though all the accused admitted that the scene of offence is the three road junction and busy locality they did not find mediators from respective locality. They started along with the mediator to the scene of offence. PW-2 is one of the mediators. He admitted in his cross examination that he signed Ex.P-1 on request of Excise police and except that he does not know anything about the case and another mediator is not examined by the prosecution. Hence prosecution failed to prove the guilt of the accused beyond all reasonable doubt."

The learned counsel for the petitioner brought to the notice of this Court that the appeal filed by A-4 was disposed of by the Commissioner of Prohibition & Excise, A.P. Hyderabad on 3.06.2009 whereunder the confiscation orders of vehicle passed by the first respondent therein are set aside and the offence was compounded on the request of the appellant with a lenient view and with a strict warning that if involved in future in any case, the matter will be viewed seriously. Therefore, the seized vehicle was released after receipt of the compounding fee.

Per contra, the learned Public Prosecutor contended that the petitioner who is the licensee of M/s. Sumithra Wines, was doing illegal transportation in association with A-4 who is said to be the benamidar and a prima facie case is made out from the charge sheet.

Perusal of the facts and the material on record would disclose that on full-fledged trial, after appreciation of the evidence let in by the prosecution through PWs.1 to 7 in C.C.No.56 of 2009, the Court below found that the prosecution failed to prove the guilt of the accused beyond all reasonable doubt as stated supra and acquitted them. Even the Commissioner, Prohibition and Excise, allowed A-4 to compound the offence and released the seized vehicle. That apart, the prosecution witnesses categorically deposed that there is no proof of document whether A-4 has got any connection either with the crime vehicle or the seized liquor and they have not issued any notice to the accused to produce either permit or licence and they have not issued any receipts with regard to seizing of liquor and jeep from them. PW-2 has categorically admitted in the cross-examination that he does not know the contents of Ex.P-1 and he signed Ex.P-1 in Excise Police Station on the request of the excise police and except that he does not know anything about the case. PW-3 also stated that there is no document to show that the seized liquor bottles belongs to the shop of A-5 and there is no documentary proof that A-5 sold away the material to A-1 to A-4 and the same has been transporting.

In the light of the above said evidence and the judgment of the Court below, this Court feels that there is hardly any chance for conviction of the petitioner. Therefore, continuation of proceedings against the petitioner would amount to abuse of process of the Court. As such, it is a fit case where the proceedings initiated against the petitioner are liable to be quashed.

Accordingly, the criminal petition is allowed thereby quashing the proceedings initiated against the petitioner/A-5 in C.C.No.56 of 2009 on the file of the Judicial Magistrate of First Class, Kanigiri.

Miscellaneous petitions, if any, pending in this criminal petition shall stand closed.

P. KESHAVA RAO,J

Date:18.04.2018
Ccm

HONOURABLE SRI JUSTICE P. KESHAVA RAO

CRIMINAL PETITION No.12741 of 2010

Date:18.04.2018

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