

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 3479 OF 2018

ORDER:

This petition is filed under Section 482 of Cr.P.C. by the petitioner-accused to quash the proceedings against him in C.C.No. 29 of 2017 on the file of the Court of Judicial I Class Magistrate at Thorrur registered for the offences punishable under Section 34 (e) of A.P. Excise Act (for short, 'the Act') and Section 5 of GUR (Jaggery) Regulation Use Order, 1968.

2. The Sub-Inspector of Police, Maripeda Police Station, registered a case against the petitioner in crime No. 201 of 2014 for the offences punishable under Section 34 (e) of the Act and Section 5 of GUR (Jaggery) Regulation Use Order, 1968, took up investigation and filed final report having concluded that there is material against the petitioner to proceed further for the offences referred *supra*.

3. The present petition is filed under Section 482 of Cr.P.C. to quash the proceedings on the sole ground that the S.I. of Police, Law and Order, is incompetent to investigate into the offences punishable under the Act and therefore the very investigation and filing of charge sheet are illegal and in support of his contention, he placed reliance on the judgment of a single judge of this Court in ***Muthneni Chander and others Vs. State of A.P. and another***¹.

4. Learned Public Prosecutor (T.S.) has opposed the petition on the ground that Law and Order Police are also competent to investigate and file charge sheet and in support of his contention, he placed reliance on the judgment of a

¹ 2011 (2) ALT (Cri.) 88 (A.P.)

Division Bench of this Court in ***K.Narayana and another Vs. State of Andhra Pradesh***².

5. The only ground urged by learned counsel for the petitioner before this Court is that Law and Order Police are incompetent to investigate into the offences under the Act and his contention is supported by a single judge of this Court in ***Muthneni Chander*** (1st *supra*), wherein it is held that

"As per Section 56 of the Act, it is only the Prohibition and Excise Officer not below the rank of Prohibition and Excise Sub-Inspector who has got power of investigation as regards offences under Sections 27, 34, 35, 36, 37, 37 (A) and 40 (A) of the Act within such area as may be notified in this behalf. After investigation, Section 57 of the Act empowers such investigating officer namely, Prohibition and Excise Officer not below the rank of Prohibition and Excise Sub-Inspector to file report before the Magistrate, in which event, such Prohibition and Excise Officer for the purpose of Section 190 of the Code of Criminal Procedure, 1973, will be deemed to be a Police Officer and the report filed by him to be a police report. Thus, under Sections 56 and 57 of the Act, it is only the Prohibition and Excise Officer, who is competent to make investigation and to file report/charge sheet before the Magistrate. When the Inspector of Police, Matwada Circle, raided Parklane (SSS) wine shop and seized IMFL bottles which were being sold contrary to the license conditions rendering the accused themselves punishable under Section 36 of the Act, then it is for the said Inspector of Police to report the said matter to the Prohibition and Excise Officer concerned having territorial jurisdiction over the area for registration of the case, for investigating of the case and for filing final report/charge sheet after investigation as per Sections 56 and 57 of the Act. A Police Officer much less the Inspector of Police, Matwada Circle, and the Sub-Inspector of Police, Intehezargunj Police Station, Warangal, have no jurisdiction to investigate into the offence punishable under Section 36 of the Act and to file charge sheet before the Magistrate. In that view of the matter, investigation made by the Sub-Inspector of Police, Intehezargunj Police Station, Warangal, and charge sheet filed by him before the lower Court against the petitioners are without jurisdiction."

Thus, the law declared by the single judge of this Court is consistent that Law and Order Police are incompetent to investigate into and file final report before Magistrate for the offences under the Act but the view taken by the single judge is contrary to the law declared by a Division Bench of this Court in ***K.Narayana*** (2nd *supra*), wherein it is held that

² 1997 (1) ALD (CrI.) 712

"As there is no power to the excise officer to file charge sheet in the Code of Criminal Procedure, the Excise Act conferred that power whenever he deals with the offences under the said Act. By that itself, it cannot be said that the Police Officers, who investigate the offences according to the provisions of the Act, have no power to conduct investigation and file charge sheet. Search, seizure and investigation are procedural provisions provided to deal with the offences under the Excise Act. It is settled principle of law that procedural provisions must be read in the object and purpose of the Act. The main object of the Excise Act is to regulate the production, manufacture, possession, transport, purchase and sale of intoxicating liquor and drugs. Therefore, the contention that the police have no power to conduct investigation and file charge sheet in respect of offences under the A.P. Excise Act is unsustainable."

The same view is expressed by another single judge of this Court in **Banavath Lalu and others Vs. State**³. In view of the law declared by the Division Bench of this Court, the law declared by the single judge of this Court in **Muthneni Chander** (1st *supra*) is not binding on this Court and therefore the contention of learned counsel for the petitioner holds no substance and the same is liable to be rejected.

6. At the end, learned counsel for the petitioner has also raised the plea of delay in filing final report. The plea of delay cannot be taken into consideration while deciding an application under Section 482 of Cr.P.C. since delay in investigation by itself is not a ground to quash the proceedings at this stage and the petitioner is permitted to raise such contention during trial.

7. In view of my foregoing discussion, I find no ground to quash the proceedings and the petition deserves to be dismissed.

8. The criminal petition is accordingly dismissed. Pending miscellaneous petitions, if any, in this criminal petition shall stand dismissed in consequence.

Date: 14-09-2018.

JSK

M.SATYANARAYANA MURTHY, J.

³ 1996 (1) ALD (CrL.) 393