HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Writ Petition No.9471 of 2018

ORDER:

In this petition filed under Article 226 of the Constitution, the petitioners seek a writ of Mandamus to declare the proceedings in COR No.60 of 2018 issued by the 1st respondent dated 14.03.2018 and arresting the 2nd petitioner and seizing 16,146 KGs of white jaggery and 4,900 KGs of alum by registering a case in COR No.60 of 2018 under Section 7-A r/w Section 8(e) of A.P. Prohibition Act, 1995; Section 34(e) of A.P. Excise Act, 1968 and clause 3(b) and 4(i) (iii) of GUR (Regulation of Excise) Order, 1968 as illegal, arbitrary, unjust apart from violative of principles of natural justice and consequently to quash COR No.60 of 2018 of Prohibition and Excise Station, Kagaznagar by releasing the jaggery and alum seized from the premises of the petitioners.

2a) It is the case of the petitioners that 1st petitioner—Firm is a joint family firm running under the name and style *Jai Gayathri Traders and General Merchants* represented by Racharla Srikanth dealing with essential commodities. They have been running the said business since 2012 onwards and obtained VAT Registration Certificate on 01.10.2012 under A.P. VAT Act, 2005. After introduction of Goods and Services Act, 2016 (GST), they got registered under GST.

b) It is their further case that they are dealers in food grains including white jaggery and alum. While so, the excise authorities are frequently visiting their business premises and harassing merely on suspicion that they are supplying jaggery for the purpose of manufacture of illegal liquor. At that stage they filed W.P.No.27019 of 2017 seeking a writ of Mandamus to declare the action of the SHO of Sirpur Kagaznagar Prohibition and Excise, and SHO, Sirpur Kagaznagar Law and Order Police Station, Komarambheem Asifabad District in interfering their business in black jaggery, white jaggery, colour jaggery and alum under valid licence and bills and not allowing them to carry on their lawful business and visiting the shop and godown as illegal, arbitrary and without any authority of law and consequently direct the respondents not to interfere in any manner. This Court by order dated 11.08.2017 disposed of the said writ petition directing the respondent authorities not to interfere with the lawful business carried on by the petitioner without there being any material and if at all there is any violation on the part of the petitioner, the respondent authorities shall mandatorily issue notice before proceeding to take any action.

c) It is submitted that 1st respondent in spite of the above said direction conducted raid of their premises on 14.03.2018 and seized 16,146 Kgs of jaggery and 4,900 KGs of alum from the premises and also arrested 2nd petitioner by registering a case in COR No.60 of 2018 for the offence under Section 7-A r/w Section 8 (e) of A.P. Prohibition Act, 1995. The stocking of alum and white jaggery is not prohibited under any law.

d) The 2nd respondent filed counter contending that previously 1st petitioner—firm filed W.P.No.27019 of 2017 not to interfere with their business activities. This Court by an order dated 11.08.2017 directed the respondent authorities not to interfere with the lawful business carried on by the petitioner without there being any material and the respondent authorities shall mandatorily issue notice before taking any action and also left open to the authorities in exercising the powers of search and seizure in the event there is a material with the department with respect to any unlawful activity suspected to be carried out by the petitioner. Pursuant to the directions of the High Court the respondents issued 41A Cr.P.C. notice.

e) It is submitted that petitioners failed to file way bills, purchase bills to show the said black jaggery was purchased for the purpose of human consumption. As huge quantity of jaggery is recovered from the 1st petitioner shop, 3rd respondent lodged a complaint before SHO, Kagaznagar on 10.03.2017 on the allegation that Gayathri Traders—1st petitioner firm was dumping jaggery for preparation and sale of ID liquor and they obstructed the excise officials from conducting search and manhandled. As such the police registered a case in Cr.No.45 of 2018 for the offences under Sections 332, 352 r/w 34 IPC. It is further submitted that officials of Enforcement CI, Adilabad and staff raided the 1st petitioner—firm and seized 16,146 Kgs. of jaggery (897 boxes each 18 Kgs.) and 4,900 Kgs of alum (98 bags each bag 50 Kgs.) and arrested the accused by drawing samples under a cover of panchanama and samples were sent to chemical analysis and the seized property was produced before the Deputy Commissioner and a case was registered vide COR No.60/2018 for the offence under Section 7-A r/w 8(e) of A.P. Prohibition Act, 1995; Section 34(e) of A.P. Excise Act, 1968 and Clause 3 (b) and 4 (i) (iii) of

GUR (Regulation of Excise) Order, 1968. At the stage of investigation, the petitioners sought to quash the COR No.60/2018. It is submitted that petitioners have alternative remedy of appeal before the appellate authority for release of stocks. He thus prayed to dismiss the writ petition.

3) Heard arguments of Sri Nandigam Krishna Rao, learned counsel for petitioners and learned Government Pleader for Prohibition and Excise (TS).

4) Vehemently challenging the criminal proceedings lodged against him in COR No.60/2018, learned counsel for petitioners Sri Nandigam Krishna Rao, would argue that the petitioner is a joint family firm doing business both wholesale and retail and dealing in essential commodities including jaggery as well as alum. Their purchases and sales are supported by valid bills and they obtained VAT registration also and therefore, in all respects they have been conducting lawful business since 2012. He further argued, however, the excise authorities have been persecuting the petitioners now and then by conducting searches in their premises as if they have been selling jaggery and alum to the manufacturers of ID liquor. Learned counsel would fulminate that merely because jaggery and alum are used as raw material for preparation of ID liquor that alone cannot be a ground for excise officials to conduct frequent raids and searches without there being any reliable additional material showing that the petitioner firm has been storing jaggery and alum only with a purpose to sell to the manufacturers of ID liquor. In fact, in the past unable to bear the harassment of excise officials, when the petitioner firm filed

W.P.No.27019/2017, this Court directed excise and police officials not to interfere with the lawful business carried on by the petitioners without there being any material and if at all there was any violation on the part of petitioners, the respondent authorities shall mandatorily issue notice before proceeding to take any action. Inspite of such clear directions, learned counsel would lament, the officials at first registered Crime No.45/2018 dt.10.03.2018 as if the petitioner and his men obstructed the officials from conducting search in their premises and thus committed offences under Sections 353 and 332 IPC. He would submit that no such incident had ever occurred and it was only a ruse to implicate the petitioners in a false case. Not being satisfied, the authorities registered COR No.60/2018 under Section 7-A r/w 8(e) of A.P. Prohibition Act, 1995 and Section 34(e) of A.P. Excise Act, 1968 as if during the course of search on 14.03.2018, they found and seized 16,146 Kgs of Jaggery and 4,900 kgs of alum in the premises of petitioner's firm which was intended to sell to the manufacturers of ID liquor and the petitioner did not produce records. This case is another manifestation of implication of petitioners in a false case. Learned counsel would submit that the petitioner firm has been doing lawful business and the above commodities which were seized were also covered by valid bills and vouchers. He thus prayed to quash the proceedings and order release of seized commodities.

5) Learned Government Pleader for Prohibition and Excise, in oppugnation would argue that in W.P.No.27019/2017, this Court no doubt directed the respondent authorities not to interfere with the lawful business

of the petitioner without there being any material and respondent authorities shall mandatorily issue notice before taking any action and also left open to the authorities to exercise the powers of search and seizure in the event there is a material with the department in respect of any unlawful activity suspected to be carried out by the petitioner. Learned G.P would argue that it was not without any material that the excise officials have, conducted search of the premises of the petitioner firm. The said firm under the guise of dealing with essential commodities, hoarding jaggery and alum which are the raw materials for ID liquor and petitioner firm has been vending the jaggery and alum to the manufacturers of ID liquor and there were previous cases against the petitioner firm. While-so, in due compliance of the direction in W.P.No.27019/2017 and following Rule 5 of GUR (Regulation of Use) Order, 1968, the authorities issued periodical notices to the petitioner firm to submit the particulars of the jaggery purchased and sold but the petitioner firm failed to furnish the particulars in the required proforma during the relevant period and therefore the excise officials have conducted search in the petitioner firm on 14.03.2018 in the presence of 2nd petitioner and seized huge quantity of jaggery and alum. Learned G.P would vehemently submit that the petitioner at the time of search miserably failed to produce any of the authorised documents such as vouchers, invoices and bills relating to the seized commodity. The authorities were constrained to seize the jaggery and alum on the reasonable belief that those materials are used to manufacture of I.D liquor, referred them for laboratory analysis and the report showed that the samples contain jaggery, which could be used as raw material for manufacturing Illicitly Distilled Liquor unfit for consumption and the other sample was the alum. In view of the conduct of the petitioners and also the laboratory report establishing that the petitioners were dealing with intoxicants, the registration of FIR and investigation are well found and therefore, the petition may be dismissed.

6) The point for determination is:

"Whether there are merits in the Writ Petition to allow?"

7) **POINT**: The nub of the issue is, when the commodities such as jaggery or for that matter, black jaggery and alum are not prohibited to trade under the excise laws or any other laws, whether the excise officials on the apprehension that those two commodities are since used as raw materials for preparation of Illicitly Distilled liquor, can conduct searches in the premises of the traders and seize them. In the context of black jaggery, this issue was elaborately dealt with by a Full Bench of this Court in ***Ganesh Traders v. District Collector, Karimnagar and others***[1]. The question involved therein precisely was that possession and transport of black jaggery although by itself is not an offence can the vehicles carrying the same be liable to be seized under the provisions of A.P Excise Act and A.P Prohibition Act. The majority of judges while discussing whether an offence under Section 34(e) of A.P Excise Act is attracted in respect of possession of a black jaggery, have observed that under Sections 53 and 55 of the A.P Excise Act, the authorities have power to seize any material including black jaggery, which is kept or possessed for the purpose of

[1] 2002(1) ALD 210 = 2002 (1) ALT 611

manufacturing I.D liquor. Prevention of manufacturing of ID liquor is not only the mischief that was to be redressed by the Act but it is referable to the duty of the State to protect the health of the citizens. Most importantly, they further observed, for attracting offences, a person need not actually be caught in process of manufacturing of intoxicant (ID liquor) as defined in Section 21 of the Excise Act. As noticed, Sections 53 to 55 of the Act, which enables any officer of the Excise Department to arrest without any warrant for the offences punishable under Section 34 of A.P Excise Act and also search any place. Section 55 of A.P Excise Act, empowers Commissioner, Collector, Police Officer, or any excise official, not below the rank of Excise Sub-Inspector to search any place and seize anything found therein on a mere suspension (has reason to believe) that an offence under Section 34 of the Act is likely to be committed. The general principle of criminal law that preparation for committing offence is not offence, is not applicable to exceptional case under law dealing with intoxicants, for even preparation to manufacture liquor is made an offence under the statute. The majority decision was summed up thus:

> *"**Para 52**: We may now summarise our discussion on the main question whether keeping or being in possession of black jaggery material for the purpose of manufacture of liquor is an offence under the Excise Act.*
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> *(a) The provisions of the A. P. Excise Act including Sections 13(f) and 34(e) should be interpreted with reference to the objects of the Act and penal provisions dealing with excise offences should also receive broader interpretation having regard to the fact that the Excise Act is intended to achieve partially the objective of Article 47 of the Constitution of India;*

(b) Having regard to the provisions of Sections 13, 34 and 53 and 55 of the Excise Act, we must hold that if Commissioner, Collector, Police Officer or Excise Officer "has reason to believe" that black jaggery (material) is likely to be used for manufacture of ID liquor the same can be seized and persons can be arrested and subject to facts and circumstances of each case including any report of the chemical examiner a charge sheet can be filed under Section 34(e) of the Excise Act.

(c) In a situation such as (a) and (b) above, if the circumstances so warrant the person/accused is entitled to approach under Section 482 of Cr.P.C. and/or Article 226 of the Constitution of India and seek quashing of proceedings provided his case come within well settled principles for quashing F.I.R., charge sheet or criminal case. However, a Writ Petition in such an event at the stage of investigation is not permissible when there is prima facie material to show that black jaggery is not fit for human consumption and was intended for manufacture of ID liquor.

(d) As held by the Supreme Court in NASU SHEIKH's case (supra) if the F.I.R. shows the ingredients of offence under Section 34(e) read with Section 13(f) of the Excise Act, a person cannot be heard to say in High Court that he is carrying on business or transporting black jaggery either because he is an agriculturist or businessman. All such pleas are to be raised before appropriate criminal Court."

The above decision, as already stated supra was rendered in the context of black jaggery. In the instant case, the jaggery seized was not specifically referred to as black jaggery but it was referred as white jaggery or ordinary jaggery in the seizure report. However, the analysis report would show that the sample jaggery could be used as raw material in the manufacture of I.D liquor unfit for human consumption and injurious to health. Therefore, in my considered view, the ratio in the above decision applies with all its force to the case on hand. The said decision lays down that for attracting an offence under Section 34(e) of A.P Excise Act, a person need not actually be caught in the process of manufacturing an intoxicant (I.D liquor) but suffice, the excise officials can exercise their powers under Sections 53 to 55 of the A.P Excise Act to search any place and seize anything found therein on a mere suspicion (has reason to believe) that an offence under Section 34(e) of the A.P Excise Act is likely to be committed. In that view, in the instant case it has now to be seen whether the excise officials have sufficient material or reason to believe that an offence under Section 34(e) of A.P Excise Act is likely to be committed.

8) The submission of excise officials is that the petitioner firm has been hoarding the jaggery and alum in large scale under the guise of doing business in essential commodities and there were previous cases against the brother of 2nd petitioner namely Rachakonda Srikanth, in whose name the licence of Jai Gayathri Traders and General Merchants was issued vide Crime No.170/2017 of Prohibition and Excise Station, Kagaznagar. A perusal of the copy of FIR in Crime No.170/2017 filed along with the counter affidavit, shows that Rachakonda Srikanth of Jai Gayathri Traders, was arrayed as 2nd accused for the offences under Section 7-A r/w 8(e) of A.P. Prohibition Act, 1995 and Section 34(e) of A.P Excise Act, 1968.

9) Nextly, it is the submission of the respondents that the excise officials issued notices under Section 5 of GUR (Regulation of Excise) Order, 1968 to the petitioner to furnish the particulars of jaggery purchased

and sold but the petitioner failed to furnish the details during the relevant period and therefore, the respondent authorities were constrained to conduct search in the premises of petitioner's firm. Copies of notices dated 21.04.2017, 02.11.2017, 29.11.2017 and 27.11.2017 issued under Rule 5 were filed. As can be seen, under Rule 5 of GUR (Regulation of Use) Order, 1968, the Central Govt or any authorised officer appointed by it in this behalf may, with a view to secure compliance with the order a) require any person, who in its or his opinion is likely to use gur for a purpose not permitted under clause 3, to furnish within such period and in such form or at such intervals as may be specified, such information returns are reports in respect of raw materials used; and b) prescribe the manner in which accounts of any stocks or purchases or sales of raw materials should be kept. The petitioner has not disputed with the issuance of notices under Rule 5. However, he has not produced any material to show that he promptly submitted returns.

10) Nextly, the submission of respondents is that on the date of search, the petitioner could not show the bills, invoices etc., pertaining to the huge quantity of jaggery and alum found in his premises.

11) So on a conspectus of the reasons submitted, the respondents have rightly seized the commodities and upon securing the analysis report registered the case against the petitioners. The petitioner except harping that false case was foisted did not produce any material showing that he complied with Rule 5 of the Gur (Regulation of Use) Order, 1968. Therefore, investigation shall lead to its logical conclusion. If at all the

petitioner has any material, he can produce the same before the Investigating Agency, which shall be taken into consideration to conduct the investigation according to law. Sofaras petitioner's prayer for a direction to release the jaggery and alum seized is concerned, in view of the decision reported in ***Md. Akbar v. State of Telangana***[2], the petitioner can approach Deputy Commissioner of Prohibition and Excise, in which case, the said authority shall pass an order on merits with regard to release of the commodities expeditiously.

12) With the above observations, this Writ Petition is dismissed.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 12.06.2018
Murthy/scs

[2] 2015 (1) ALD (Crl.) 1000