HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Revision Case No.659 of 2006

ORDER:

The challenge in this Crl.R.C is the judgment dated 02.02.2006 in Crl.A.No.14/2003 passed by learned I Addl. Sessions Judge, Mahabubnagar, whereunder he confirmed the conviction and sentence passed by the Judicial Magistrate of First Class, Kollapur in C.C.No.557/2000 against accused for the offence under Section 34(a) of A.P Excise Act, sentencing him to undergo RI for 6 months and to pay a fine of Rs.5000/- and in default to suffer SI for 3 months.

2) The factual matrix of the case is thus:

a) On 27.11.1998, on reliable information, the Excise Sub-Inspector, Kollapur, proceeded to Pentlavelly village along with two mediators at 9:45am and found the accused at his house and served Ex.P.2—search memo on him and thereupon searched his house and found a plastic can containing 5 litres of I.D liquor without any licence. Hence, the S.I seized the contraband under the cover of Ex.P.3—panchanama and drew samples in the presence of mediators and arrested the accused. He proceeded to Police Station along with accused and the contraband and registered a crime in PCOR No.104/1998-99 and sent the accused for judicial custody and deposited the sample bottle in Court for sending the same to chemical examiner. On receiving the report from the chemical examiner opining that the sample was illicitly distilled liquor unfit for potable purpose, laid charge sheet against the accused under Section 34(a) of A.P Excise Act.

b) Charge was framed for the said offence and trial went on. The prosecution examined PWs.1 to 3 and exhibited Exs.P.1 to P.6 and MO1. PW.1 is the mediator for the seizure proceedings. PWs.2 and 3 are the Prohibition and Excise Sub-Inspectors, Mahabubnagar, who conducted the raid. PW.1 turned hostile. However, the Trial Court relying upon the evidence of PWs.2 and 3 and finding the admitted signature of PW.1 and accused on Ex.P.3—proceedings, found accused guilty of the charge and convicted him. On appeal, learned I Additional District Judge, Mahabubnagar, confirmed the judgment of the Trial Court.

Hence the Crl.R.C.

3) Heard both sides.

4) Severely castigating the judgements of the Courts below, learned counsel for petitioner would argue that the prosecution failed to prove the guilt of accused inasmuch as the independent mediator showed *volte-face* and conviction was recorded on the strength of the uncorroborated and interested testimony of the two excise police officials, which is against the principles of law. Learned counsel would argue that the excise officials have not been able to even mention the number of the house which they allegedly raided. Therefore, the raid and the seizure of contraband from the custody of the accused are myth and concoction and the case must be held to be setup for statistical purpose. He would argue that if the conviction were to be recorded

on the uncorroborated testimony of police officials who are highly interested, disastrous results would follow in every case. He thus prayed to allow the Crl.R.C and set aside the conviction and sentence.

5) Per contra, learned Addl. Public Prosecutor supported the impugned judgments and argued that the Crl.R.C is devoid of merits and hence the same may be dismissed.

6) The point for determination is:

"Whether there are merits in the Crl.R.C to allow?"

7) **POINT**: It is true that in the instant case, PW.1 who is one of the mediators, gave a *volte-face*. He deposed that he knows the accused but he does not know anything about the case and about 4 years ago, excise officials called him to outpost of Pentlavelly and obtained his signatures on a white paper. He admitted his signature on Ex.P.3—mediator report. His signature is marked as Ex.P.1. He denied the suggestion in the cross-examination of A.P.P that on 27.11.1998, the excise police have seized 5 litres of I.D liquor from the house of accused in his presence. Thus it is evident that PW.1 did not support prosecution case. PWs.2 and 3, who are Excise Sub-Inspectors, ofcourse deposed in tune with the prosecution case. It is in this backdrop the argument of the petitioner is that the uncorroborated testimony of PWs.2 and 3 being excise officials, could not have been relied upon by the Courts below. This argument *per se* is not worthy to accept. As rightly observed by the Courts below, in the eye of law, the police personnel are also like any other witnesses and they cannot be treated on a different footing. However, since they have

interest in the outcome of the case, they can only be termed as interested witnesses and thereby, their evidence needs to be scrutinised with circumspection. Except that the Court cannot make an outright rejection of the evidence of a police official. The Trial Court in this regard relied upon the judgment in ***State of Kerala v. M.M. Mathew and another***[1], wherein it was held that the evidence of police officers cannot be underestimated merely because they are police officials. Therefore, their evidence is required to be scrutinised carefully. When analysed, PWs.2 and 3 unequivocally stated that on 27.11.1998 at about 9:45am, on information they proceeded to Pentlavelly village and collected two mediators and raided the house of accused, when at that time he was present in the house and after serving memo, his house was searched and a plastic can containing 5 litres of I.D liquor was found and seized under Ex.P.3—panchanama. PW.2 has arrested the accused and took him to PS along with samples and registered the case as Crime No.PCOR 104/1998-99 and sent him to judicial remand. The sample bottles were sent for chemical analysis and the examiner issued report under Ex.P.6. Thereupon, charge sheet was filed. The cross-examination was mainly focused on the point that the police officials have not mentioned the house number and the boundaries and they have not obtained any certificate from the Panchayat to show that the raided house belonged to the accused. Except that, the testimony of PWs.2 and 3 on other aspects could not be attempted to discredit. In Ex.P.3—panchanama, PW.2 clearly mentioned that no house number was available to the house raided and therefore, they could not mention in Ex.P.3. In my considered view, merely because, the house number is not mentioned,

[1] AIR 1978 SC 1571

that fact alone would not cut across the entire case of the prosecution. It must be noted that in Ex.P3—panchanama, the signature of accused is very much available indicating that the panchanama proceedings were drafted in his presence and with his knowledge. In the cross-examination there is no specific denial of the signature of accused on Ex.P.3. Moreover, though turned hostile, PW.1 also admitted his signature on Ex.P.3 and his signature was specifically marked as Ex.P.1. It should be noted that PW.1 earlier worked as a Kavalkar (Talari) of Pentlavelly. Therefore, it is hard to believe that the police could by threat or coercion obtain his signature on a white paper to implicate accused. These facts would clearly manifest that the police have indeed conducted raid in the house of accused in his presence and seized the contraband. Therefore, inspite of PW.1 turned hostile for the reasons best known to him, the evidence of PWs.2 and 3 amply established the prosecution case and therefore, the presumption under Section 42 of A.P Excise Act would follow. As per Ex.P.6, the sample of the seized contraband proved to be illicitly distilled liquor. Therefore, the Courts below rightly convicted accused for the offence under Section 34(a) of A.P Excise Act and their judgments are impeccable and impregnable.

8) In the result, this Criminal Revision Case is dismissed.

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

U. DURGA PRASAD RAO, J

Date: 12.06.2018

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