

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.6130 OF 2018

ORDER:

Accused No.5 in C.C.No.112 of 2017 on the file of Judicial Magistrate of First Class, Gooty, filed the criminal petition under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') to quash the proceedings against him in the above C.C., on various grounds.

The Assistant Prohibition & Excise Superintendent, Anantapuramu, filed charge sheet before the Judicial Magistrate of First Class, Gooty against the petitioner and other accused persons, after recording the statements of L.Ws.1 to 14, having concluded that there is prima facie material against the petitioner along with the other accused persons for the offence punishable under Section 34(a) of Andhra Pradesh Excise Act, 1968 (for short 'the Act').

The basis for registration of the crime is, reliable information received from the Prohibition & Excise Superintendent, Ananthapuramu, G.Muniswamy, Assistant Prohibition & Excise Superintendent (L.W.16) and P.Neelakanteswara Reddy, Prohibition & Excise Inspector, Gooty, (L.W.11) accompanied the staff conducted joint raid near M/s.Kanakadurga filling station, situated on Gooty-Hyderabad road, found one container bearing No.HR 61 B 8155 parked near filling station. On suspicion, L.W.16 and staff went to the container and on seeing the officials A.1 and A.2 tried to escape, but were surrounded and detained. On enquiry, A.1 and A.2 disclosed in Hindi language that they are transporting MAGGI boxes in container. However, on suspicion opened the container and found there are three rows of Coconut Milk Powder boxes, after

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unloading the boxes them, found cartons containing liquor bottles. On verification of the said cartons, the Excise Officials found 272 cartons contain 48 NIPs of Bag-piper whisky 180 ml each and 528 cartons contain 48 Nips of Haywards Select Whisky each of 180 ml capacity. On demand, A.1 and A.2 did not produce valid licence and permit pertaining to transportation of above liquor. However, on interrogation A.1 stated that the liquor boxes were loaded at Chowgule Gardens, Zuari Nagar, Industrial Area from a Shed (Go-down) as per the instructions of A.4 with the connivance of A.5, who is the petitioner herein, to unload the same at Andhra Pradesh. Thus the role played by the petitioner is, he connived with A.4 for transportation of spurious liquor to Andhra Pradesh from Zuari Nagar Industrial Area, without any valid permit.

On the basis of panchanama, the police registered the crime and issued F.I.R., conducted investigation and filed charge sheet. During investigation, the Assistant Prohibition & Excise Superintendent recorded the statement of witnesses including confessional statement. The statement of Smt.C.Nagu @ Nagaratnam disclosed that on 06.02.2014 the driver Gulzar Hussain Chowdary and cleaner Mehandarlal brought the container bearing No.HR 61 B 8155 and the owner of the vehicle also accompanied to the godown and the said owner of the container petitioner herein removed the side doors of the tipper removing screws and loaded the spurious liquor cartons. The said fact is also supported by Shaik Khan Sahab to some extent. Therefore, the statement of the witnesses is the basis for registration of crime and for filing charge sheet against the petitioner and other accused persons.

The counsel for the petitioner contended that the allegations in the charge sheet would not attract the ingredients of offence under Section 34(a) of the Act except, extra judicial confession, no other material is available on record to enrope the petitioner with the offence under Section 34(a) of the Act and prayed to quash the proceedings.

During hearing, Sri.N.Chandra Sekhar Reddy, learned counsel for the petitioner reiterated the contentions and contended that in the absence of specific allegations to constitute an offence punishable under Section 34(a) of the Act, the Court cannot proceed against the petitioner with the trial and prayed to quash the proceedings against the petitioner. He also drawn the attention of this Court to the panchanama where there is no allegation against the petitioner, but he was allegedly enroped with the offence and prayed to quash the proceedings against the petitioner.

The Public Prosecutor for the State of A.P. opposed the petition on the ground that the statements of two witnesses is sufficient to conclude that the petitioner is also involved directly in the crime and prayed to dismiss the petition.

It is an undisputed fact that the petitioner is arraigned as A.5 and he is the owner of the container bearing No.HR 61 B 8155. But as per the statement of Nagaratna, the driver, cleaner and the petitioner came to the godown and removed side doors of container and by removing screws loaded the spurious liquor boxes in the container and closed the same. The said fact is supported by the statement of Shaik Khan Sab. If these statements are accepted on its face value, there is evidence that the petitioner involved in

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commission of the offence by loading spurious liquor in the container for transportation.

Therefore, the statements recorded by L.W.16 during investigation coupled with the other material collected are suffice to conclude prima facie that the petitioner also directly involved in transportation of the spurious liquor cartons.

Learned counsel for the petitioner contended that the allegations in the charge sheet would not constitute an offence punishable under Section 34(a) of the Act.

Section 34(a) of the Act deals with imports, exports, transports, manufactures, collects or possesses or sells any intoxicant etc. Here it is an undisputed fact that the petitioners or any of the accused did not possess licence for transportation of liquor cartons from Chowgule Gardens, Zuari Nagar, Industrial Area and transportation of such huge quantity of liquor from different states would constitute an offence.

Yet, the other contention raised by the counsel for the petitioner is that extra judicial confession is not sufficient to enrope the petitioner with the offence.

The extra judicial confession is not substantive evidence, if it is corroborated by independent evidence and inspires confidence of the Court it can be relied on to record conviction after trial. But, no law says that on the basis of extra judicial confession, accused can be acquitted, though it is a weak type of evidence. Therefore, this contention is without any substance.

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On over all consideration of entire material available on record, there is a prima facie material against the petitioner to proceed with the trial in C.C.No.112 of 2017 pending on the file of Judicial Magistrate of First Class, Gooty and therefore, the proceedings against the petitioner cannot be quashed and consequently the petition is liable to be dismissed.

In the result, the criminal petition is dismissed.

Pending miscellaneous petitions in the petition, if any, shall stand closed.

21.06.2018
BV

M.SATYANARAYANA MURTHY,J

