

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

W.P.NO.21240 OF 2018

O R D E R

Aggrieved by the action of the 5<sup>th</sup> respondent – Inspector of Police, Government Railway Police, RP Circle, Khajipet, Warangal District, in seizing 29.100 Kgs. of silver items of the petitioner by registering FIR.No.77 of 2018, the present writ petition is filed.

Learned counsel for the petitioner submits that petitioner produced all the documents necessary for transporting the goods, but in spite of the same, 5<sup>th</sup> respondent seized the articles, without there being any reason to believe that cognizable offence has been committed. He contends that seizure and registration of crimes are illegal, arbitrary and without any authority of law. He further submits that in the FIR, except mentioning seizure under Section 102 Cr.P.C., no offence is mentioned. He submits that in similar facts and circumstances in *MEHAR INDIA ENTERPRISES, TAMILNADU v. STATE OF ANDHRA PRADESH*<sup>1</sup>, a learned single Judge of this court quashed the FIR.

On the other hand, learned Assistant Government Pleader for Home produced written instructions of the 5<sup>th</sup> respondent stating that as the petitioner was transporting silver ornaments without any proper bills, based on mediator's report, the articles were seized under cover of panchanama and crime was registered in Cr.No.77 of 2018 under Section 102 Cr.P.C. The 5<sup>th</sup> respondent addressed letters dated 09.06.2018 to the Commercial Tax Officer, Warangal and also to the Additional Director of Income Tax (Investigation) Station, Corporate Building, Autonagar, Vijayawada, requesting them to examine the transaction and take necessary action

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<sup>1</sup> 2008(1) ALD (CrI.) 372 (AP)

and intimate the action taken to the railway police and further requested to issue clearance certificates, but so far no reply was received from the Commercial Tax Department. It is stated that accused was informed to approach the Income Tax Department and produce clearance certificate, for producing the same before the Judicial First Class Magistrate Court for Railways, Kazipet for further proceedings. It is stated that Income Tax Department, Vijayawada, addressed a letter dated 18.07.2018 to the 5<sup>th</sup> respondent, stating that their office caused necessary enquiries in this case and has no objection for release of the seized silver articles to the concerned persons. It is further stated that notice dated 09.06.2018 was issued to the accused to approach the Commercial Tax Officer, Warangal for clearance certificate, but instead of complying with the same, he filed the present writ petition.

From the written instructions, it could be seen that the silver articles of the petitioner were seized during transport, on the ground that no proper bills were produced and that property is already deposited before the court of Judicial First Class Magistrate, Kazipet vide CPR. No.59/2018 dated 30.06.2018. Learned counsel for the petitioner produced information furnished by the Goods and Service Tax Officer – IV, Krishnalanka Circle, Vijayawada, for frequently asked questions. As per the answer to question No.8 “*Whether E-way bill need to be generated for all movements of good*”, it is stated that “*Jewellery, goldsmiths’s and silversmiths’ wares and other articles (chapter 71), E-way bill is not required to be generated.*”

The above said information furnished by the petitioner issued by the Goods and Service Tax Officer –IV, could not be disputed by the learned Assistant Government Pleader for Home.

Further, as per the written instructions, it could be seen that when the 5<sup>th</sup> respondent addressed letters dated 09.06.2018 to the Income Tax and Commercial Tax Departments, the Income Tax Department, Vijayawada, addressed a letter dated 18.07.2018 to the 5<sup>th</sup> respondent, stating that their office caused enquiries in this case and they have '*no objection*' for release of the seized silver articles to the concerned persons. Only the clearance certificate from Commercial Tax Department, is awaited.

Section 102 Cr.P.C. empowers the police officer to seize certain properties. Sub section (1) of the said provision, which is relevant for the facts of the present case, is extracted as under for better appreciation:

“Any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence.”

A reading of the above provision makes it clear that the police officer can seize any property, which is alleged or suspected to have been stolen, or found under circumstances, which create suspicion of commission of any 'offence', which as per Section 2(n) of Cr.P.C. shall mean any act or omission made punishable by any law for the time being in force.

In present case, a reading of seizure proceedings and FIR goes to show that only section 102 of Cr.P.C. is mentioned and nothing is alleged that the silver items seized, are suspected to have been stolen, or that the circumstances created suspicion of commission of any offence. In the absence of these circumstances, seizure cannot be sustained.

In the decision relied on by the counsel for the petitioner in *MEHAR INDIA ENTERPRISES, TAMILNADU v. STATE OF ANDHRA PRADESH* (1 *supra*), this court, in similar facts and circumstances, where the property was seized under Section 102 of Cr.P.C on mere apprehension and the investigation has not disclosed commission of any offence, held that all proceedings in pursuance of FIR, are not sustainable. The relevant portion of the order is as under:

“4. In a decision in *Kilparthi Suri Appa Rao v. State of A.P.* Rep. by Public Prosecutor, Hyderabad and another, 2003 (2) ALD (CrL.) 900 (A.P.) = 2004(2) ALT (CrL.) 333 (AP), this court held that registration of F.I.R. by the police in connection with seizure of property under Section 102 Cr.P.C., is improper and unwarranted, because question of registration an F.I.R. arises only when information relating to cognizable offence is given to the Officer-in-charge of Police Station. It was further held that suspicion of a property being stolen *per se* does not amount to commission of a cognizable offence. In the above case also seizure was effected more than four months prior to filing of the criminal petition under Section 482 Cr.P.C., and it was not even alleged that the police had any information or complaint from anyone in respect of the said property and so *prima facie* there was no cognizable offence with regard to the seized property and when there is no cognizable offence, question of registering the F.I.R. does not arise. In the present case also, no report or complaint is received by the police from anyone in respect of the seized property and, on the other hand, the investigation discloses that the first petitioner is owner of the seized property and petitioners 2 and 3 were his employees and they were carrying the same on the instructions of the first petitioner, duly on the transport vouchers and other documents and if that is so, question of continuing further proceedings against the petitioner does not arise, especially when there is no allegation of commission of any cognizable offence against any of the petitioners with respect to subject property.”

In an other decision, a learned single Judge of this court, in similar facts and circumstances, in *KILAPARTHI SURI APPA RAO v. STATE OF A.P.*<sup>2</sup>, held as under:

“6. In my considered opinion police registering an F.I.R. in connection with seizure of property under Section 102 Cr.P.C. is improper and unwarranted, because of question

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<sup>2</sup> 2003(2) ALD (CrL.) 900 (A.P.)

of registering an F.I.R. arises only when information relating to 'cognizable offence' is given to the Officer-in-Charge of a Police Station. Section 2(h) Cr.P.C. defines 'offence' as an act or omission made punishable by any law in force. Transporting an old engine in an auto without document of title, *prima facie*, is not an offence punishable under any law for the time being in force. Obviously because 'suspicion' of a property being stolen *per se* does not amount to commission of a cognizable offence, Section 102 Cr.P.C. contemplates the Police Officer seizing the property, under that section, sending 'a report of seizure' to the Magistrate and also to the Officer-in-charge of the Police Station and does not contemplate registering an FIR."

In view of the above facts and circumstances of the case and the decisions of this court cited *supra*, the seizure of the silver articles of the petitioner in question, is declared as illegal and the writ petition is accordingly allowed.

As per the written instructions, since the clearance certificate from the Commercial Tax Department, is awaited, it is made clear that this order will not preclude the said department from taking appropriate action in accordance with law.

Interlocutory applications pending, if any, shall stand closed. No costs.

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A.RAJASHEKER REDDY,J

DATE:09—08—2018  
AVS