

SMT JUSTICE T. RAJANI

CRIMINAL PETITION Nos.8718 and 8769 of 2011

COMMON ORDER:

The criminal petitions are filed, seeking for quash of the proceedings in P.R.No.8-08/2011-2012, against the petitioner, who is A2, on the file of the Prohibition and Excise Station, Miryalaguda, Nalgonda District and Cr.No.129 of 2011 on the file of the Thipparthi Police Station, Nalgonda District, against the petitioner, who is A3, respectively. The offences alleged are under Sections 7(A) read with 8(e) of the A.P. Prohibition Act, 1995 and Section 34(e) of the A.P. Excise Act, 1968.

2. Heard the counsel for the petitioners and the learned Public Prosecutor, appearing for the first respondent

3. The case of the prosecution in CRLP.No.8718 of 2011 is that the house of A1 was searched and 100 Kgs of black jaggery and 10 Kgs of alum was found in possession of A1. A1 made confession stating that he purchased the jaggery and alum from A2.

The case of the prosecution in CRLP.No.8769 of 2011 is that the agricultural lands of A1 were searched and 100 Kgs of black jaggery, 10 Kgs of alum were found in possession of A1 and A2. A1 and A2 made a confession that they purchased the jaggery and alum from A3.

4. The counsel for the petitioners relies on a judgment of this Court in CRLP.No.571 of 2011 dated 10.06.2015 wherein this Court quashed the proceedings against the petitioner therein, who was

prosecuted for selling black jaggery and alum to A1 therein. The Court observed that there was no evidence to show that the petitioner therein was aware about the activities of A1 to whom black jaggery and alum were sold by the petitioner therein and held that the petitioner therein cannot be imputed with the knowledge that A1 having purchased the black jaggery and alum from him, was using the same for illicit distillation of liquor. It also observed that even if the entire allegations in the charge sheet and the statements of the witnesses and panchanama were taken as true, at best, it would only go to show that A1, who has allegedly distilled liquor, purchased black jaggery and alum, which are raw materials for preparation of ID liquor from the petitioner therein and there is no evidence to show that the petitioner therein, knowing fully well, that A1 was involved in manufacture of ID liquor, sold black jaggery and alum to him.

5. In this case also, there is absolutely no material to show that the petitioners sold black jaggery and alum to A1 knowing fully well that A1 was involved in sale of ID liquor and that he intended to use the black jaggery and alum for manufacture of ID liquor. The decision of a Full Bench of this Court in *GANESH TRADERS v. DISTRICT COLLECTOR*¹ dealt with this aspect elaborately. One of the three Judges of the Bench dissented with the view of other two Judges. But even the said judgment is to the effect that unless the Commissioner, Collector, Police Officer or Excise Officer has reason to believe that black jaggery is intended to manufacture ID liquor, mere keeping and/or transporting any other material cannot be violation of

¹ 2002 (1) ALD 210 (FB)

law. In such event, it is always open to the accused to prove before the competent criminal Court that black jaggery was material intended not for manufacture of liquor but was intended for other purpose. It is not in dispute that black jaggery can be used for purposes other than preparation of ID liquor.

6. The counsel for the petitioners relies on a memo issued by the Government of Andhra Pradesh Revenue (Ex.III) Department dated 20.12.2000, which is the subsequent to the above cited judgment, wherein it was decided that black jaggery or rotten jaggery or any other form of jaggery are viewed as agricultural produce or its bi-products and inclusion of the same in the list of the materials used in the manufacture of ID liquor may adversely affect the interest of genuine ryots and traders and thereby, it was decided not to impose restriction of any agriculture produce, particularly on jaggery, black jaggery or rotten jaggery.

7. Hence, when such is the position, it is the burden of the prosecution to, *prima facie*, show that the petitioners had sold black jaggery and alum to A1, knowing fully well that it was purchased with intention to manufacture distilled ID liquor. Hence, having no such material being placed before this Court, it cannot be said that the petitioners had sold the black jaggery with necessary knowledge that it would be used in the manufacture of ID liquor. Hence, in that view of the matter, continuation of further proceedings against the petitioners would only be abuse of process of law.

In the light of the above, the criminal petitions are allowed and the proceedings in P.R.No.8-08/2011-2012, against the petitioner, who is A2, on the file of the Prohibition and Excise Station, Miryalaguda, Nalgonda District and the proceedings in Cr.No.129 of 2011 on the file of the Thipparthi Police Station, Nalgonda District, against the petitioner, who is A3, are hereby quashed. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

September 24, 2018
DSK

T. RAJANI, J

