

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Writ Petition No.23451 of 2018

ORDER:

The petitioner seeks writ in the nature of Mandamus declaring the action of 4th respondent in seizing the vehicle in connection with FIR No.176/2018 of Maripeda PS, Mahabubnagar District, as illegal and consequently to quash the FIR against the petitioner and direct the respondents to release the vehicle vide DCM No.AP 15 TA 5315.

2) Heard both sides.

3) The case of the petitioner is that he is the owner-cum-driver of the vehicle bearing No.AP 15 TA 5315 and on 29.05.2018, Karra Madhusudhan Reddy (A.1 in FIR No.176/2018 of Maripeda PS), engaged his vehicle to transport certain goods and without knowing the nature of the goods, the petitioner agreed and in the enroute near Ellampeta, the 4th respondent stopped and checked the vehicle and found bags containing the black jaggery and on intimation that the black jaggery was banned by the Government, seized the vehicle and the contraband. Though petitioner informed 4th respondent that he was only the owner-cum-driver of the vehicle and he did not know the nature of the goods, the 4th respondent did not heed to his representation and seized the vehicle. The FIR was registered under Section 34(e) of A.P Excise Act and the offence enumerated in the said Section has no application to the petitioner. Therefore, the FIR may be

ordered to be quashed and the vehicle may be directed to be released by the respondents.

4) Per contra, learned Assistant Government Pleader for Home argued that the black jaggery is used for preparation of I.D liquor and the petitioner knowingly transported the same and therefore, the authorities have rightly seized the contraband as well as the vehicle which is liable for confiscation.

5) The point for determination is:

“Whether there are merits in the petition to allow?”

6) **POINT**: The contention of the petitioner is that he was only transporting the black jaggery without knowing the nature of the goods and therefore the FIR is not maintainable against him. This argument does not hold water because admittedly the petitioner is the owner-cum-driver of the vehicle. Generally an owner will not agree for transporting the goods and commodities without knowing their nature. For fixation of the transport charges, the owners of vehicle would first of all ascertain the nature of the goods and commodities to be transported. Therefore, it is too naïve for the petitioner to contend that he did not know that black jaggery being transported in his vehicle. Ofcourse this aspect has to be confirmed by the authorities after completion of investigation. As the matter stands, the FIR cannot be quashed basing on the argument of the petitioner.

7) Then coming to the release of vehicle, it is the 2nd respondent—Deputy Commissioner of Prohibition and Excise, who is empowered to pass

an order for release of the vehicle. On this aspect, it is useful to extract

Section 46 of the Excise Act, which reads thus:

“46. Confiscation by Prohibition and Excise Officers in certain cases.-

(1) Notwithstanding any thing contained in this Act or any other law for the time being in force, where any thing liable for Confiscation under Section 45 is seized or detained under the provisions of this Act, the officer seizing and detaining such property shall, without any unreasonable delay; produce the said seized property before the Deputy Commissioner of Prohibition and Excise who has jurisdiction over the area.

(2) On production of said seized property under sub-section (1) the Deputy Commissioner of Prohibition and Excise if satisfied that an offence under this Act has been committed, may, whether or not a prosecution is instituted for the commission of such an offence, order, Confiscation of such property.

(3) While making an order of Confiscation under sub-section (2), the Deputy Commissioner of Prohibition and Excise may also order that such of the properties to which the order of Confiscation relates which in his opinion cannot be preserved or are not fit for human consumption be destroyed.

(4) Where the Deputy Commissioner of Prohibition and Excise after passing an order of Confiscation under Sub-section (2) is of the opinion that it is expedient in the public interest so to do, he may order the confiscated property or any part thereof to be sold by public auction or dispose of departmentally.

(5) The Deputy Commissioner of Prohibition and Excise shall submit a full report of all particulars of Confiscation to the Commissioner of Prohibition and Excise within twenty four hours of such Confiscation.

(6) The Deputy Commissioner of Prohibition and Excise shall for the purpose of this Act, have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (Central Act 5 of 1908) when making enquiries under this section in respect of the following matters, namely:-

(a) receiving evidence on affidavits,

(b) summoning and enforcing the attendance of any person and examining him on oath; and

(c) compelling the production of documents.”

46 (A) xx xx xx

46 (B) xx xx xx

46 (C) xx xx xx

46 (D) xx xx xx

46(E) Bar of jurisdiction--

“Notwithstanding any thing contained in the Code of Criminal Procedure, 1973 (Act 2 of 1974) when the Deputy Commissioner of Prohibition and Excise or the appellate authority is seized with the matter under this Act, no court shall entertain any application in respect of excisable articles, any package, covering, receptacle, any animal, vehicle or other conveyance used in carrying such articles as far as its release, confiscation is concerned and the jurisdiction of the Deputy Commissioner of Prohibition and Excise or the appellate authority with regard to the disposal of the same shall be exclusive.”

8) This Court in successive judgments held in terms of Section 46 of Excise Act that the party has to approach the Deputy Commissioner of Prohibition and Excise for interim custody of property seized.

a) In ***Banavathu Babu vs. Government of Andhra Pradesh***¹, it was observed thus:

“There is considerable amount of force in the submission made by the learned Government Pleader. It is appropriate to note that the A.P. Excise Act and A.P. Prohibition Act are special legislations. When a special piece of legislation confers power of confiscation and confers power upon a particular authority to deal with such property and further when that provision sets out that notwithstanding anything contained for the time being in force in any other law, the intention of the statute maker becomes explicitly

¹ 2014 (6) ALD 380 = 2015(1) ALT 414

clear. The power available to a Magistrate under Section 457 of the Code of Criminal Procedure shall be construed to have been taken away and corresponding power is conferred upon the notified agency by the statute maker (Emphasis supplied). Section 46 of the Act specifically dealt with the issues relating to confiscation of properties, which are seized in connection with the offences committed under the Act. Therefore, it is the Deputy Commissioner of Prohibition & Excise concerned, who has the exclusive authority and power to deal with all the aspects relating to confiscation of the property seized in relation to prohibition and excise offences.”

- b) In another judgment of this Court in *Azmeera Saraiah vs. State of A.P. and another*², similar view is expressed as follows:

*“The crucial question which requires consideration in this case is that at what stage the petitioner has to approach this Court under Section 482 Cr.P.C. When the provisions of A.P. Excise Act clearly mandate when the Deputy Commissioner of Prohibition and Excise is seized of the matter and any property/vehicle is seized in connection with commission of offence under A.P. Excise Act the Deputy Commissioner alone **should** be approached for interim custody of the property, the petitioners without approaching the Deputy Commissioner of Prohibition and Excise cannot approach this Court directly under Section 482 Cr.P.C. seeking interim custody of the vehicle. Further when the Deputy Commissioner of Prohibition of Excise alone is empowered to direct interim custody of the property/vehicle seized in connection with the commission of offence under A.P. Prohibition and Excise Act the petitioner cannot approach the Magistrate wrongly and thereafter, under the guise that the Magistrate returned the application cannot approach this Court under Section 482 Cr.P.C.” (Emphasis supplied)*

² Unreported judgment in CrI.P.Nos.2512, 3123 & 3163 of 2013 dt.30.04.2013

c) Similar view was expressed in *K.Sasi Kumar vs. State of A.P.*³ also.

In view of the above authoritative precedential jurisprudence, the petitioner can approach the 2nd respondent for release of the vehicle.

9) In the result, this Writ Petition is disposed of giving liberty to the petitioner to file an application before the 2nd respondent seeking release of the vehicle, in which case, the 2nd respondent shall pass an appropriate order on merits within one (1) week from the date of receipt of such application.

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

Date: 11.07.2018

SCS



U. DURGA PRASAD RAO, J

³ Unreported judgment in Crl.P.No.10825 of 2014 dt.24.09.2014