

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 27013 of 2018

ORDER:

- 1) Heard.
- 2) The present writ petition came to be filed seeking issuance of writ of mandamus declaring the action of respondent No.3 in not issuing NOC/letter for release of Fixed Deposit Receipt (FDR) for Rs.50,000/- bearing FDR No.0157051, dated 13.06.2017, as illegal and arbitrary.
- 3) The facts in issue are as under:

The petitioner is the registered owner of the Auto Rickshaw bearing registered No.AP-35-X-7108, and was using the same for transportation. While things stood thus, on 18.09.2016, the vehicle of the petitioner was seized by respondent No.4 on the ground that he was transporting contraband of 40 liters of Illicit Distilled liquor. A case in Crime No. 110 of 2016-17, dated 18.09.2016, came to be registered and the vehicle was taken into custody. Later on, respondent No.3 issued a notice under Section 13A of Andhra Pradesh Prohibition Act, 1995 (for short, 'the Act of 1995') and Section 46 A of Andhra Pradesh Excise Act, 1968 (for short, 'the Act of 1968'), seeking explanation as to why the said vehicle should not be confiscated. An explanation came to be submitted by the petitioner on 02.12.2016 and thereafter he filed an application before the

Deputy Commissioner of Prohibition and Excise for interim custody of the vehicle. When the said application came to be rejected, the petitioner filed W.P.No.5981 of 2018, questioning the action of the respondents in seizing the vehicle. By order dated 22.02.2017, this Court, while granting interim custody of the vehicle, passed the following order:

“If the petitioner approaches the 3rd respondent – Deputy Commissioner of Prohibition and Excise, Vizianagaram, with an application, enclosing thereto a Fixed Deposit Receipt (FDR) drawn in favour of the Deputy Commissioner on any nationalized bank payable at Vizianagaram, in a sum of Rs.50,000/-, the auto rickshaw bearing registration No.AP 35 X 7108 may be entrusted for interim custody to the petitioner, provided he produces necessary material in the form of the Registration Certificate (RC) of the vehicle.....”.

Meanwhile, the criminal case which was registered against the petitioner ended in acquittal on 19.12.2017. In view of the acquittal, the petitioner made an application before the concerned authorities for release of the FDR, which was deposited, while granting interim custody of the vehicle. The inaction of the respondents in not releasing the FDR is the challenged in this writ petition.

4) The main ground urged by the learned counsel for the petitioner is that in view of the acquittal in criminal case, the authorities cannot withhold the FDR which was deposited at the time of interim custody of the vehicle. Since the vehicle is with the petitioner, he submits that the order granted by this Court gets merged with the order in the criminal case and in view of the

acquittal, the petitioner is entitled not only for holding the vehicle in his custody, but also for refund of the FDR executed.

5) A counter came to be filed by the learned Government Pleader for Prohibition and Excise disputing the averments made in the affidavit filed in support of the writ petition. According to him, the criminal case has nothing to do with the confiscation proceedings initiated by the authorities and that both are independent of each other. He further submits that since the orders passed by the Deputy Commissioner of Prohibition and Excise has become final and since the same is not challenged by way of an appeal, the petitioner has no *locus* to seek refund of the deposited amount.

6) In order to appreciate the said submissions, it would be useful to refer to Section 13-D of the Andhra Pradesh Prohibition Act, 1995 (for short, 'the Act of 1995) and Section 46-D of the Andhra Pradesh Excise Act, 1968 (for short, 'the Act of 1968), which read as under:

Section 13-D of the Act of 1995: Order of confiscation not to interfere with other punishments: - The order of confiscation under Sub-Section (2) of Section 13 or Section 13B shall not prevent from initiation of criminal proceedings against the accused under this Act. The result of criminal proceedings either acquittal or conviction or otherwise under the provisions of this Act, will have no bearing on the order of confiscation passed under this Act.

Section 46-D of the Act of 1968: Order of confiscation not to interfere with other punishments: - The order of confiscation under Sub-Section (2) of Section 46 or Section 46 B shall not prevent from initiation of criminal proceedings against the accused under this Act. The result of criminal proceedings either acquittal or

conviction or otherwise under the provisions of this Act, will have no bearing on the order of confiscation passed under this Act.

7) Having regard to the provisions of law referred to above, it is clear that acquittal in a criminal case will have no bearing on the award of confiscation passed under the provisions of the Andhra Pradesh Excise Act and/or under the Prohibition Act. At this stage, it is also to be noticed that on 15.12.2016, the Deputy Commissioner of Prohibition and Excise passed the order of confiscation directing the authorities to confiscate the vehicle owned by the petitioner. The said order though passed in the month of December, 2016, is not challenged by way of an appeal.

8) From the above, it is clear that the order of confiscation passed by the Deputy Commissioner has become final as on today. At this stage, learned counsel for the petitioner would submit that he would instruct his client to prefer an appeal against the confiscation proceedings, in which event, the authorities may be directed to deal with the same, in accordance with law.

9) Having regard to the above circumstances, the request of the petitioner seeking refund of Rs.50,000/-, deposited at the time of taking interim custody of the vehicle, cannot be ordered, merely because the criminal case registered against the petitioner ended in an acquittal.

10) Hence, I see no reason to entertain the writ petition and the same is accordingly dismissed. However, the petitioner is always at

liberty to avail the remedies available under law in challenging the order passed by the Deputy Commissioner of Prohibition & Excise, Vizianagaram.

11) Miscellaneous petitions, pending if any, shall stand closed in the light of this final order. No order as to costs.

JUSTICE C. PRAVEEN KUMAR

25.10.2018
vhh

