

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.28383 OF 2018

ORDER:

The present writ petition came to be filed challenging the order dated 7.8.2018, passed by the 4th respondent in RC.No.317/2018/C.

The facts which lead to filing the present writ petition are as under:

The petitioner herein participated in a public auction in respect of a shop notified at Gazette Serial No.WG/349 and became a successful bidder. The license was granted in her favour under licence bearing No.WG/349/2017-19 and she has been running the shop, at the premises bearing D.No.1-151/A, Suryaraopalem Village, Undrajavram Mandal, West Godavari District. While the things stood thus, the 4th respondent herein, basing on the report of the 5th respondent, issued the impugned proceedings stating that the 5th respondent has inspected the shop of the petitioner and found Nowkaranama conducting the business. It is further stated that he informed the Nowkaranama with regard to the incident that occurred on 5.8.2018 at about 9.30 p.m near the railway track road leading to Kaldhari village at Sathewada village of Undrajvaram Mandal, wherein five youngsters consumed beer and imperial blue classic grain whisky leading to death of two persons. The statement of one of the persons revealed that the beer bottles and rice was purchased from M/s. Annapurna Restaurant and the imperial blue whisk bottle was given by his friend. It is further stated that the beer bottles were supplied by M/s. Lakshmi Ganapathi Wines, Suryaraopalem to Meka Mallikarjuna Rao, who sold the bottles through his unauthorised outlet. Basing on the above, the 4th respondent came to the conclusion that the Nowkaranama has violated the provisions of Rule 39, Rule 35 of the A.P. Excise (Grant of Licence of Selling by Shop and Conditions of Licence) Rules, 2012 (for short, "the Rules") and in exercise of the powers conferred under Section 31(1)(b) of the A.P. Excise Act,

passed the impugned order, suspending the license of the petitioner's shop, pending enquiry. Hence, the present writ petition came to be filed.

Heard both sides.

Sri O. Manohar Reddy, learned counsel for the petitioner would submit that the impugned order does not indicate the involvement of the petitioner either in the death of the persons or sale of adulterated alcohol. In fact, he pleads that the impugned order as well as the counter would reveal that the whisky was not purchased from the shop of the petitioner and the beer bottles were purchased from one Meka Mallikarjuna Rao, who sold the same through his un-authorised outlet. Since the allegations made do not fall within the conditions stipulated in Rules 39 and 35 A.P. Excise (Grant of Licence of Selling by Shop and Conditions of Licence) Rules, 2012 (for short, "the Rules"), seeks suspension of the impugned order.

On the other hand, learned Government Pleader for Prohibition and Excise, would submit that the Nowkarnama holder has supplied the beer bottles to Meka Mallikarjuna Rao, to sell the same through his un-authorised outlet. It is stated that the beer bottles were sold to the persons who are below the age of 21 years and thus the Licensee has violated the conditions of license.

During the course of arguments, learned Government Pleader for Prohibition and Excise, would contend that these liquor bottles were purchased by Meka Mallikarjuna Rao, on behalf of the persons who consumed the same on the date of incident, hence, he pleads that since the enquiry is still pending, suspending the impugned order may not be necessary. He submits that a direction may be given to the Prohibition and Excise authority to complete the enquiry at the earliest.

In reply, Sri O. Monher Reddy, learned counsel for the petitioner would submit that for no reason, the licence of the petitioner has been suspended and since last three months the business of the petitioner is

closed. In the absence of any iota of material connecting him with the sale of beer bottles, states that if the impugned order is not suspended, the petitioner would be put to irreparable loss as he has obtained the licence by investing an amount of Rs.11,00,000/-.

After hearing the rival contentions, it would be appropriate to refer to the impugned order dated 7.8.2018. A reading of the impugned order shows that Nowkarnama Holder/Licensee has obtained the A-4 licence in the name of M/s. Sri Lakshmi Ganapathi Wines, Suryaraopalem Village of Undrajavaram Mandal. On 7.8.2018 at about 4.00 p.m, the Station House Officer, Prohibition and Excise Station, Tanuku along with Sub Inspector of Prohibition and Excise and staff visited the shop of M/s. Sri Lakshmi Ganapathi Wines, during which time, the Nowkarnama was present and conducting business. He was informed about the incident that took place on 5.8.2018 at about 0.30 p.m near the railway track road leading to Kaldhari Village at Satyawada Village of Undrajavaram Mandal, wherein two out of five persons who consumed alcohol died and Medicherla Siva Varma @ Siva was hospitalized due to consumption of beer.

The impugned order shows that as per the statement given by M. Siva Varma @ Siva, Gunda Karthik and Peddisetti Nani Prasad, the beer bottles and fried rice were purchased from Meka Mallikarjuna Rao, who is the owner of M/s. Annapoorna Restaurant, Pasalapudi and the imperial Blue whisky bottle was given to Ambati Prasad by his own friend. The order further shows that the beer bottles which were consumed by the five persons, were supplied by M/s. Sri Lakshmi Ganapathi Wines, Suryaraopalem as per the statement given by Meka Mallikharjuna Rao. The order further indicates that Nowkarnama holder/ Licensee has supplied beer bottles to Meka Mallikarjuna Rao to sell through his un-authorised outlet and that the beer bottles were sold to the above said persons, who were below the age of 21 years.

From the contents referred to above, it is very clear that five persons who consumed the liquor never directly purchased the beer bottles from the shop of the petitioner.

On the other hand, the statement of Meka Mallikarjuna Rao, would show that these liquor bottles were supplied to them by Meka Mallikarjuna Rao, who in turn alleged to have been purchased the same from the shop of the petitioner.

Therefore, the contents of the impugned order does not, *prima facie*, indicate the involvement of the petitioner in sale of five beer bottles to the five persons. Therefore, violation of Rule 29 of Rules viz. sale of liquor to persons below the age of 21 years, is not *prima facie*, established.

Coming to the violation of Rule 35 of the Rules, states that the licensee shall not stock IMFL and FL in any place other than the licensed premises, and that the licensee shall be held responsible for keeping any IMFL and FL un-authorisedly outside or nearby the licensed premises. A reading of the impugned order, does not indicate that the FL stock was kept other than in the licensed premises. Therefore, *prima facie*, it cannot be said that there was any violation of Rule 35 of the Rules as well.

The learned counsel for the petitioner further submits that the analysis report does not indicate that the batch numbers of the whisky and the beer bottles containing any poisonous substances or methods.

Having regard to the circumstances stated above and as this Court is of the opinion that the involvement of the petitioner in supply of the liquor to the above said persons, is not *prima facie*, established, the writ petition is allowed, setting aside the order dated 7.8.2018, passed by the 4th respondent in RC.No.317/2018/C. Further, the 4th respondent is directed to proceed with the enquiry and decide the issue in accordance

with law, uninfluenced by the observations made in this order. No order as to costs.

As a sequel to disposal of the writ petition, WP.M.Ps if any pending shall stand closed.

C. PRAVEEN KUMAR, J

Dated:25.10.2018.

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HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

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