

THE HONOURABLE SRI JUSTICE P. KESHA RAO

WRIT PETITION No.14260 of 2016

ORDER:

The prayer sought for in this Writ Petition is as under :

“...to issue an appropriate Writ order or direction, more particularly one in the nature of Writ of Mandamus by declaring the action of the Respondent No.2 herein in threatening to execute the bond or otherwise to deposit the amount of Rs. 3,00,000/- despite submitting the explanation on 1.4.2016 to the show cause notice under Section 111 of Cr.P.C., dated 29.3.2016 issued by the 3rd respondent, as being illegal, arbitrary and unjust, and consequently set aside the show cause notice, dated 29.3.2016 issued by the respondent no.3”.

The facts of the case are that the petitioner is engaged in the purchase and sale of jaggery and other kirana items in the name and style of M/s Venkateswara General Stores, under valid TOT Registration Certificate issued from the Office of the Commercial Tax Department vide GRN No.VJI/06/0/1267. The petitioner stated that the black jaggery is an agricultural produce and there is no law prohibiting sale, purchase and transport of black jaggery. In fact, the Commissioner of Prohibition and Excise, in his proceedings dated 22.12.2001 has issued a clarification by directing the law enforcing authorities not to harass the business people who are doing business in black jaggery by purchasing the same under bills and way bills and permits issued by the Market Committees. In fact, the Government of Andhra Pradesh issued

G.O.Ms.No.1929, dated 27.12.2006 giving exemption from tax for the sale of jaggery.

While the matter stood thus, the respondent No.3 herein basing on a complaint given by the respondent No.2 issued a show cause notice under Section 111 of Cr.P.C. to furnish a bond for Rs.3,00,000/- with two sureties for a period of 24 months and sought for the explanation of the petitioner within seven days from the date of receipt of the said show cause notice. In the said show cause notice, it is stated that the petitioner is a habitual offender within the meaning of Clause (4) of Section 116 of Cr.P.C., and he has indulged in illicit trade of distilled liquor, unmindful of the cases registered against him. In those circumstances, the petitioner was asked to execute a bond with two sureties. Aggrieved by the said proceedings, the present writ petition is filed.

The learned counsel appearing for the petitioner would contend that before issuing show cause notice, no enquiry was conducted and simply basing on the report submitted by the respondent No.2, show cause notice was issued. The show cause notice refers to criminal case registered on 5.2.2016 against the petitioner. In fact, the petitioner has already closed down his business long back. Therefore, the intention of the respondents in insisting the petitioner to furnish the bond is only to implicate him in some false cases. In fact, the petitioner has already submitted his explanation through his counsel on 1.4.2016 with a request to drop all further proceedings. Therefore, the petitioner filed this writ petition to set aside the proceedings issued in the form of the show cause notice.

Per contra, the learned Government Pleader appearing for the respondents would submit that the period mentioned in the show cause notice is 24 months, which starts from the date of issuance of the show cause notice. In fact, the said period has already expired. Therefore, the impugned orders expired due to efflux of time.

A perusal of material on record, including the show cause notice, dated 29.3.2016 would reveal that based on the report submitted by the respondent No.2, respondent No.3 has issued the impugned show cause notice asking the petitioner to furnish a bond for Rs. 3,00,000/- with two sureties to his satisfaction for a period of 24 months. In fact, the period for which the petitioner was asked to execute the bond under the impugned show cause notice already expired. The intention behind the issuance of the show cause notice is to bind over the petitioner by receiving the bond with two sureties to the satisfaction of the respondent No.3 and to seek good behaviour from him. When the period stipulated in the show cause notice already expired, the question of either calling the explanation or binding over the petitioner for further period will not arise. On that count, no further cause would survive in the present writ petition due to efflux of time.

Accordingly, the writ petition is closed.

Miscellaneous petitions, pending if any, shall stand closed.

No order as to costs.

JUSTICE P. KESHA RAO

Date: 17.04.2018

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