

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition no.41672 of 2018

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed requesting to issue a writ of Mandamus or any other appropriate writ or order declaring the order, dated 13.11.2018, of the 3rd respondent, passed in Rc.No.326/ 2017-19/ A4, as illegal, arbitrary and violative of principles of natural justice.

2. I have heard the submissions of *Sri K.Narsi Reddy*, learned counsel appearing for the petitioner and of the learned Government Pleader for Prohibition & Excise (AP), appearing for the respondents.

3. Learned counsel appearing for the petitioner submits as follows: 'The petitioner was granted licence to sell liquor by A4 shop. He is running his business ever since the grant of licence, without contravention of any of the conditions of licence. While so, the 3rd respondent passed orders, dated 13.11.2018, referring to a Government Order & instructions issued by the Commissioner. Thereafter, a crime has been registered against third parties on the alleged confession made by such third parties. Afterwards, the 3rd respondent passed the impugned order alleging that the petitioner violated the conditions of licence and also Rule 35 of the AP Excise (Lease of Right of Selling by Shop and Conditions of Licence) Rules, 2012. Before passing the suspension orders, no opportunity was afforded to the petitioner. Therefore, the present writ petition is filed. In view of the judgment, dated 26.02.2018, of the Division Bench of this Court in Writ Appeal no.280 of 2018, the license of an A4 shop dealer should not be suspended based merely on the confessional statement of the person from whose hands liquor bottles are seized. There must be some link between the

A4 shop dealer and the person from whom the bottles were seized. In the instant case, there is no link established. Since the suspension is ordered pending enquiry without specifying any time period, the impugned order is liable to be set aside.'

4. Learned Government Pleader, on written instructions, would submit that the contraband involved is a huge contraband and that the petitioner committed violations of Rules and the licence conditions and that therefore, the suspension of the licence has become necessary pending enquiry and that the suspension order is justified in the facts & circumstances of the case.

5. Having regard to the submissions and the settled legal position, this Court is of the considered view that the impugned suspension order is unsustainable and is liable to be set aside.

6. The law is well settled that in the absence of something more, apart from merely a confession statement, that too, of a third party, suspension of the licence of an A4 shop dealer is not legal.

7. Having regard to the facts & submissions and the settled legal position, the Writ Petition is allowed and the impugned order is set aside, however, reserving liberty to the 3rd respondent to initiate fresh action by issuing a show cause notice and proceed further in the matter in accordance with the procedure established by law.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

M. SEETHARAMA MURTI, J

22nd November, 2018
Note:- Issue CC by 26-11-2018
(B/o)
RAR

