

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION NO.11924 OF 1999

ORDER:

This writ petition is filed seeking to call for the records relating to the appeal in CR No.34233/DPE/98/B2 from the first respondent and the records pertaining to CR No.455/97/P&E/B2 from the second respondent and declare the said orders as illegal, arbitrary and are against the provisions of law and probabilities of the case and consequently direct the respondents to release the guarantee furnished by the petitioner at the time of interim custody of the jeep.

2. It is the case of the petitioner that he is the owner of the jeep bearing No. ATO 9479 and the said vehicle was being used by following the law of the land, more particularly under the provisions of the Excise and Prohibition Laws. While the matter stood thus, the vehicle was seized in Cr.No.54/97 of Subedari Police Station, Warangal District on the allegation of transporting the contraband liquor. The second respondent by his proceedings in CR.No.455/97/B2, dated 10-10-1998 confiscated the vehicle to the State and that the petitioner preferred an appeal before the 1st respondent and that the 1st respondent by his proceedings in CR.No.3423/DPE/98/B2, dated 9-3-1999 passed orders confirming the order of the 2nd respondent.

3. Heard.

4. As seen from the order of the 1st respondent in the appeal and original order of the 2nd respondent, the *mensrea* of the owner of the vehicle has not been established involving him in the crime.

That apart, the respondents have not conducted any enquiry and have not given any opportunity to the petitioner to participate in the enquiry and more so, the appellate authority reiterated the contents of the order passed by the original authority and the appellate authority has not passed the order with open mind. It is not an independent order and it is only incorporation of the order of original authority. The action of respondents without furnishing to the petitioner and giving a finding that of not placing any evidence before the appellate authority to reverse the order of the original authority is a perverse order. The requirements contemplated under Section 46 of the A.P. Excise and Prohibition Act have not been followed by the respondent authorities.

5. In view of the observations made above and also in view of the violation of principles of natural justice, the orders passed by the appellate authority as well as the order of the original authority both are liable to be set aside.

6. Accordingly, the writ petition is allowed, setting aside the orders passed by the respondents 1 and 2. No order as to costs. As a sequel, the miscellaneous petitions pending if any shall stand closed.

Date: 13-07-2018
Shr

T.AMARNATH GOUD,J