

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION NO.8690 OF 1999

ORDER:

This writ petition is filed seeking to call for the records relating to the order dated 29-1-1999 made in Proceedings Cr.No.2711/DPE/98/B2 passed by the 1st respondent, confirming the order dated 23-8-1996 passed by the second respondent in confiscating the amount of Rs.60,000/- seized from the petitioner and quash the same.

2. It is the case of the petitioner that on 5.6.1996, the Inspector of Police, Narsampet, Warangal District seized Rs.60,000/- in Cr.No.64 of 1996, stating that the petitioner received the said amount through the sale of the contraband liquor. The second respondent by his proceedings in Cr.No.1246/96/PE/B2, dated 23-8-1996 confiscated the amount of Rs.60,000/- 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.2711/DPE/98/B2 dated 23-8-1996 passed orders confirming the order of the 2nd respondent.

3. Heard Mr.Avinash Reddy, appearing on behalf of Mr.A.Prabhakar Rao, learned counsel for the petitioner and learned Assistant Government Pleader for Prohibition and Excise (Telangana State).

4. As seen from the order of the 1st respondent in the appeal and original order of the 2nd respondent, the *mensrea* of the petitioner 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. When the petitioner has not been furnished with the material, the question of placing any evidence before the appellate authority to reverse the order of the original authority does not arise. 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 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