

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 46406 of 2018

ORDER:

- 1) Heard.
- 2) The present writ petition came to be filed seeking issuance of writ of mandamus declaring the impugned proceedings of the cancellation of petitioner A4 licence in Rc.No.A/ 172/ 2018 dated 17.12.2018 by respondent No.4 and confirmation orders passed in the appeal by respondent No.3 in DCPE-DETOCR/ 115/ 2018-JA (A2)-PEKDP, dated 06.12.2018, as illegal and arbitrary.
- 3) On 12.10.2018, the prohibition and Excise arrested one Pathi Subba Reddy, who was found carrying plastic bag containing 16 nips of Bangalore Malt Whisky Tetra Packets. Pursuant to the same, a case in Crime No.37 of 2018, dated 12.10.2018 for the offences under section 34 (a) of A.P.Excise Act, 1968, came to be registered. Thereafter, the respondent No.4 issued a show-cause notice in Rc.No.A/ 172/ 2018, dated 27.10.2018, seeking explanation, to be submitted within seven days. On 02.10.2018, the petitioner submitted his explanation and requested to drop further proceedings. Without considering the said explanation, respondent No.4 suspended the licence of the petitioner A4 shop vide order dated 06.11.2018 in Rc.No.A/ 172/ 2018. Challenging the same, the petitioner filed W.P.no.40388 of 2018. Vide order dated 09.11.2018, this Court while setting aside the said proceedings, remanded the matter back to the office of the Prohibition and Excise Superintendent-respondent No.4, directing him to pass appropriate orders, in accordance with law, after hearing all concerned. Pursuant to the orders passed on 16.11.2018, the petitioner entered appearance

for hearing and made all submissions. However, respondent No.4 suspended the licence of the petitioner A4 shop for a period of four weeks with immediate effect, vide order dated 22.11.2018 in Rc.No.A/ 172/ 2018. Challenging the said order dated 22.11.2018, the petitioner approached respondent No.3 and filed an appeal. Respondent No.3, vide order dated 24.11.2018, suspended the order dated 22.11.2018, basing on which, respondent No.4 issued an order dated 24.11.2018, revoking the suspension of licence, subject to the outcome of criminal proceedings in Crime No.37 of 2018, dated 12.10.2018 and subject to the outcome of enquiry in the matter. It is stated that on 17.12.2018, respondent No.4, as per the orders passed by respondent No.3, passed the following order:

“Therefore in exercise of powers conferred on me by virtue of Section 31 of A.P.Excise Act, 1968, I.B.Swathi, prohibition and Excise Superintendent, Proddatur, hereby order for suspension of licence of M/s. Maruthi Wines, yerraguntla, G.S.No.Kd/ 163 in licence bearing No. KD/ 163-17-19, valid up to 30.06.2019 for 18 days by considering the previous suspension period in count into four weeks period, with immediate effect to restrain the licensee not to commit such further violation of Rules in future in public interest”.

- 4) Challenging the action of the respondents in suspending the licence of the petitioner, without considering the explanation submitted by the petitioner, the present writ petition came to be filed.
- 5) The main ground urged by the learned counsel for the petitioner is that except the confession of accused, there is no material to show that the petitioner is responsible for selling loose liquor. He submits that merely because the alleged seizure was from the accused, that by itself is not sufficient to connect the petitioner with the crime, since

the confession itself shows that the accused has purchased liquor from the shop of the petitioner and also from various other shops.

6) On the other hand, learned Government Pleader placed on record the instructions received by him to the effect that the confession of A1 amply establishes involvement of the petitioner in selling loose liquor and that the stock seized belongs to the shop of the petitioner ie., M/s. Maruthi Wines.

7) The question that arises for consideration is whether there is material on record to show that the petitioner was involved in sale of loose liquor?

8) The averments in the affidavit would show that at the time of arrest, white plastic bag containing total 16 nips of Bangalore Malt Whiskey Tetra Packets containing 12 bottles with HEALS were found. Basing on the same, a case in Crime No.37 of 2018 came to be registered. Immediately thereafter, no effort was made to proceed to the shop of the petitioner to find out as to whether any liquor of that brand was available in the shop. The plea of the petitioner appears to be that the accused must have confessed that he purchased the said liquor from the petitioner shop. But if that is true then the HEALS number would be in serialim.

9) Be that as it may, having regard to the fact that 10 days have elapsed from the date of suspension of the licence and in view of the observation made by respondent No.3 in the orders dated ...11.2018 that the antecedents of the petitioner is good, this Court is of the opinion that the period of suspension of licence can be reduced to the period already completed.

10) Accordingly, the Writ Petition is disposed of, reducing the period of suspension of A4 licence of the petitioner for a period of two weeks from the date of the suspension.

11) There shall be no order as to costs. As a sequel to it, miscellaneous petitions pending if any, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

27.12.2018
vnb

