

In the High Court for the State of Telangana

WRIT PETITION No.6674 of 2019

Between:

Mittapalli Kiran Kumar.

... Petitioner

and

The State of Telangana and others.

...Respondents

Date of Judgment Pronounced: 29-03-2019

Submitted for Approval:

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

1. Whether Reporters of Local newspapers may be allowed to see the judgments? Yes/No
2. Whether the copies of judgment may be marked to Law Reporters/Journals? Yes/No
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment ? Yes/No

CHALLA KODANDA RAM,J

*** THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

+ WRIT PETITION No.6674 of 2019

% Dated 29.03.2019

Between:

Mittapalli Kiran Kumar.

... Petitioner

and

The State of Telangana and others.

...Respondents

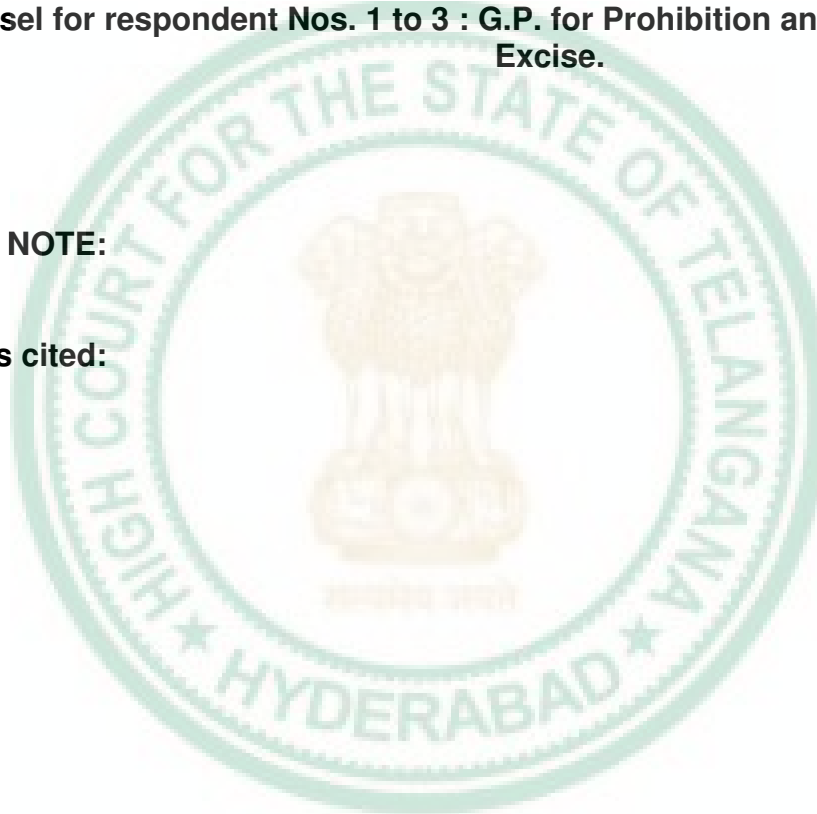
! Counsel for the petitioner : Sri Tera Rajinikanth Reddy

**^ Counsel for respondent Nos. 1 to 3 : G.P. for Prohibition and
Excise.**

<GIST:

>HEAD NOTE:

? Cases cited:



THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 6674 of 2019

ORDER:

Petitioner asserts that he is the owner of vehicle i.e., Dream Yuga Motor Cycle bearing Regd. No.TS 05-ACTR-1858; that respondent No. 3 –Station House Officer, Peddavoora Police Station, Nalgonda District, seized the said vehicle on the ground that there is violation of the provisions of the Telangana Excise Act, 1968 (for short, 'the Act'); that in spite of his approach, respondent No.3 is not releasing the subject vehicle. In the circumstances, the petitioner approached this Court by way of filing this writ petition.

2. Heard learned counsel for the petitioner and learned Government Pleader for Prohibition and Excise for the respondents.

3. Learned Government Pleader for Prohibition and Excise submits that without there being any permit and licence, the subject vehicle is transporting liquor bottles. He further submits that a case has already been registered and the matter requires further investigation / enquiry.

4. In this context, it is apt to have a glance at Sections 46(1) and 46-E of the Act, which reads as under:

“ **Section 46(1): Confiscation by Excise Officers in certain cases:** (1) Notwithstanding anything contained in this Act or any other law for the time being in force, where anything liable for confiscation under Section 45 is seized or detained under the provisions of this Act, the Officer seizing and detaining such property shall, without any unreasonable delay, produce the said seized property before the (Deputy

Commissioner of Prohibition and Excise) who has jurisdiction over the area.”

“Section 46-E Bar of jurisdiction: Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (Act 2 of 1974) when the Deputy Commissioner of Prohibition and Excise or the Appellate Authority is seized with the matter under this Act, no court shall entertain any application in respect of excisable articles any package, covering, receptacle, any animal, vehicle or other conveyance used in carrying such articles as far as its release, confiscation is concerned and the jurisdiction of the Deputy Commissioner of Prohibition & Excise or the Appellate Authority with regard to the disposal of the same shall be exclusive.”

In view of Section 46 (1) of the Act, any Officer, not necessarily the Excise official but the law and order police also, when a property is seized or detained, is duty-bound to hand over the same to the custody of the jurisdictional Deputy Commissioner of Prohibition & Excise, who in turn, is required to pass necessary orders in terms of the sub-sections of Section 46. In view of Section 46-E, there is a bar contained in any Court to entertain any application for release of the detained or seized property. A combined reading of Sections 46(1) and 46-E leaves no manner of doubt that any Authority, including the law and order police, when seizes / detains the goods / vehicle, forthwith, shall make over the same to the Deputy Commissioner concerned, and shall not surrender the same to the criminal Court notwithstanding the fact that an FIR was registered.

5. In the facts of the present case and in the light of the above provision of law, the seized goods vehicle, if not handed over to the

2nd respondent already, the 3rd respondent shall do so forthwith. The petitioner is given liberty to approach the 2nd respondent, within a week from the date of receipt of a copy of this order, under Section 34 of the Act and seek interim custody of the subject vehicle, pending adjudication of the main case. As and when such application is made, the 2nd respondent shall consider the same within ten days thereafter, as keeping vehicle idle would not enure to the benefit of anyone, as is held by the Hon'ble Supreme Court in a catena of judgments.

6. The Writ Petition is disposed of with the above said order. No costs.

7. Miscellaneous Applications, if any pending in this Writ Petition, shall also stand disposed of.

CHALLA KODANDA RAM, J

29th March, 2019

sj