

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

W.P.NO.34140 OF 2018

O R D E R

As per the averments made in the affidavit filed in support of the writ petition it could be seen that the 2nd respondent – Station House Officer, Maripeda Police Station, Mahabubabad District, registered a case in Cr.No.229 of 2019 dated 16.08.2018, under the provisions of Section 34(E) of A.P. Excise Act, on the file of Maripeda Police Station Mahabubabad District, alleging that during the vehicles check, they detected 200 kgs of Jaggery and 10 kg of alum in the vehicle of the petitioner bearing No. TS 26 T 0085 and accordingly the said vehicle was seized under panchanama. The case of the petitioner is that false case has been registered for statistical purposes and that the entire investigation is completed and the case is at the stage of filing charge sheet. Now the grievance of the petitioner is that the vehicle is lying idle with the 2nd respondent, and though he approached the said respondent for release of the vehicle giving an undertaking that he will co-operate with the investigation, the vehicle is not being released. Hence, the present writ petition.

Learned counsel for the petitioner submits that the petitioner has earlier approached the 3rd respondent – Deputy Commissioner, Prohibition and Excise Office, Warangal Waragal District, by filing a petition under Section 457 of Cr.P.C., but the said authority returned the petition stating that he has no jurisdiction to release the vehicle. Petitioner states that the above said vehicle seized by the 2nd respondent, is laying in open space and there is every possibility of vehicle getting damaged. He submits that the petitioner is ready to furnish an undertaking that he will co-operate

with the investigation and that he is also ready to furnish security and hence the competent authority may be directed to release the vehicle.

Heard the learned Government Pleaders for Home and Prohibition and Excise.

This court in similar facts and circumstances in W.P.No.6567 of 2019 dated 28.03.2019, considering Sections 46(1) and 46-A of the Telangana Excise Act, 1968, held asunder:

“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.

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 respondent No.2, 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, respondent No.2 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.

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

Having regard to the facts and circumstances of the case and the order of this court dated 28.03.2019 in W.P.No.6567 of 2017, the 2nd respondent shall forthwith handover the seized vehicle of the petitioner to the 3rd respondent, if not already handed-over. Since the vehicle of the petitioner was seized on 16.08.2018, and investigation is stated to be completed and is at the stage of filing charge sheet, and the petitioner has already approached the 3rd respondent – Deputy Commissioner, who returned the petition stating that he has no jurisdiction, and that the petitioner is undertaking to co-operate with the investigation, the writ petition is disposed of directing the 3rd respondent to release the vehicle of the petitioner bearing registration No. TS 26 T 0085, subject to petitioner furnishing FDR for a sum of Rs.25,000/- (Rupee twenty five thousand only).

Interlocutory applications pending, if any, shall stand closed. No order as to costs.

CHALLA KODANDA RAM, J

Date: 01—05—2019

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