

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**MONDAY ,THE TWENTY SIXTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY TWO**

PRESENT

THE HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL REVISION CASE NO: 753 OF 2008

Criminal Revision Case under Section 397 & 401 of Cr.P.C against the Judgment made in Cri.A No. 109/2003 dated 15/06/2006 on the file of the Court of the Additional Sessions Judge, Khammam preferred against the Order made in CC.No: 596/2003 dated 03/09/2003 on the file of the Court of the Sub Divisional Magistrate (Mobile Court) Bhadrachalam.

Between:

Thursa Sammaiah S/o. Laxmaiah, aged 40 years, Occ: Coolie, R/o.
Thursavanigudem Village, Venkatapuram Mandal, Khammam District.

...PETITIONER

AND

THE STATE OF A.P, rep by its Public Prosecutor, High Court of A.P.,
Hyderabad.

...RESPONDENTS

Counsel for the Petitioner: SRI. P V RAMANA

Counsel for the Respondent: ASSISTANT PUBLIC PROSECUTOR

The Court made the following: ORDER

THE HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL REVISION CASE No.753 OF 2008

JUDGMENT:

1. The petitioner is aggrieved by the concurrent findings of conviction for the offence under Section 34(a) of A.P.Excise Act, 1968 r/w 7(a) of A.P.Prohibition Act, 1995.
2. On 02.09.2003 at about 10.30 a.m, the Excise Sub-Inspector apprehended the petitioner and he was found in possession of 20 liters ID liquor. On the said basis, the petitioner was remanded to custody.
3. On perusal of record, it is seen that the petitioner was not produced before the Magistrate within 24 hours. No search memo is found on record, though the alleged incident took place on 02.09.2003.
4. The petitioner was convicted on pleading guilty. As seen from the order dated 03.09.2003 by the Special Divisional Magistrate, Mobile Court, Bhadrachalam vide C.C.No.596 of 2003, the alleged seizure was on 02.09.2003 and by 03.09.2003, according to the Sub Divisional Magistrate, the 20 liters ID liquor was already destroyed.

No samples were drawn. From the judgment of the learned Magistrate, it is not known as to what is the charge framed against the petitioner and it is not on record that the consequences of pleading guilty, in the back ground of minimum sentence of six months imprisonment, which can be inflicted, was neither stated nor explained to the petitioner herein. The said order of the learned Magistrate is inherently improper and unlawful unless the Magistrate explains to the accused, the charge that would be framed against him and unless it is to the knowledge of the accused that a minimum sentence was prescribed in the said Act. The procedure adopted by the Magistrate in not explaining the sentence of imprisonment and also the judgment not reflecting the charge that was framed, the course adopted is illegal.

5. Learned Sessions Judge has not adhered to any of these factors and confirmed the orders of the learned Magistrate. In accordance with Section 375 of Cr.P.C, if the conviction is on pleading guilty, appeal cannot be entertained. However, the learned Sessions Judge discussed about the seizure and confirmed the sentence.

For the reason of the learned Magistrate not explaining the consequences of pleading guilty and there are no details of the charge that was framed against the petitioner, this Court deems it an illegality in convicting the petitioner. For the said reason, the order of the learned Sub-Divisional Magistrate (Mobile Court), Bhadrachalam in C.C.No.596 of 2003 dated 03.09.2003 and consequently, the judgment in Criminal Appeal No.109 of 2003, dated 15.06.2006 are set aside.

6. No useful purpose would be served if the case is remanded back to the trial court for the reason of there being no record or no samples that were drawn of the liquor which was seized and they were not sent to any institute to confirm that the contents seized was illicit liquor.

7. Accordingly, Criminal Revision Case is allowed. Since the petitioner is on bail, his bail bonds shall stand cancelled. Miscellaneous Petitions, pending if any, shall stand closed.

//TRUE COPY//

Sd/- T. SRINIVAS
DEPUTY REGISTRAR
SECTION OFFICER

To,

1. The Additional Sessions Judge, Khammam
2. Sub-Divisional Magistrate (Mobile Court), Bhadrachalam
3. 2 CCs to Public Prosecutor(TS) (OUT)

4. One CC to SRI. P V RAMANA Advocate [OPUC]
5. Two CD Copies
6. The Superintendent, Central Prison, Warangal

VH

A handwritten signature in black ink, consisting of a stylized 'V' followed by a horizontal line and a curved flourish.

HIGH COURT

KS, J

DATED: 26/12/2022

ORDER

CRLRC.No.753 of 2008



Criminal Revision Case is allowed.

8
~~REMA~~
23/1/2023