

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION NO.2171 OF 1998

ORDER:

Aggrieved by the action of the respondents in seizing the auto of the petitioner, the present writ petition is filed.

2. The petitioner is the owner of auto bearing registration No.AP31T 5691. On 16.11.1996, a case was registered by the Excise Officials in P.R.No.156/1996-97 under Section 8(b) of the Andhra Pradesh Prohibition and Excise Act, 1995 (for short, the Act) on the allegation that the auto was transporting 60 litres of I.D. liquor in 9 plastic cans. In pursuance of registration of the above case, the second respondent issued a show cause notice dated 06.12.1996 to the petitioner to which the petitioner has submitted his explanation on 23.12.1996. Dissatisfied with the explanation of the petitioner, the second respondent passed an order dated 03.01.1997 confiscating the auto of the petitioner. Aggrieved by the same, the petitioner has preferred an appeal before the first respondent, who dismissed the same, by order dated 26.08.1997, confirming the order of the second respondent. Challenging the same, the present writ petition is filed.

3. It is seen from both the orders that neither the second respondent has given reasons for confiscation of the auto nor the first respondent has given reasons for confirmation of the order of the second respondent. It is an admitted fact that the petitioner is the owner of the auto, but not the driver. The auto in question is a public transport-cum-goods carriage. At the time of seizure, the auto was driven by the driver and the petitioner was not present at

the scene of offence. As per the crime report, the Excise Officials found 60 litres of I.D. liquor from the passengers, but not from the driver of the auto. The driver of the auto might not know the fact of passengers transporting the I.D. liquor in plastic cans. The knowledge of the same has not been established beyond reasonable doubt.

4. Admittedly, the owner has no *mens rea* and has not instructed the driver to transport the contraband. The prosecution has not proved the guilt of the owner. That apart, when the auto is an hired vehicle, the owner sitting at home cannot monitor the vehicle. The driver of the auto cannot have control over the goods, as the driver cannot verify the goods of the passengers on board. The respondents have not given reasonable opportunity to the petitioner to prove his case. Moreover, no evidence has been placed on record by the respondents for confiscation of the auto, except the extra judicial confessions of the accused and co-accused, but the same is of no evidentiary value.

5. For the reasons stated above, the writ petition is disposed of, setting aside the order of the first respondent dated 26.08.1997 in confirming the orders of the second respondent, dated 03.01.1997. No costs. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

T.AMARNATH GOUD, J

Date: 08-02-2018
TJMR