

THE HON'BLE SRI JUSTICE T. AMARNATH GOUD

WRIT PETITION No.36893 of 1998

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed by the petitioner seeking to issue a writ of certiorari calling for the records relating to the proceedings of the 1<sup>st</sup> respondent – Commissioner of Prohibition & Excise in Cr.No.847/ DPE/ 98-B2, dated 11.09.1998, confirming the orders of the 2<sup>nd</sup> respondent vide proceedings No.Cr.2652/ 95/ PE/ B2, dated 07.12.1995, and quash the same.

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

3. The brief facts of the case are that the petitioner is the owner of auto rickshaw bearing No.AP 36 T 5600, and he purchased the same from its registered owner A. Babu on 26.09.1995. The petitioner is using the auto for transportation of eggs and birds from his poultry farm. While so, on 25.10.1995 he placed the auto in its usual place and that said Babu took away the vehicle without the knowledge of the petitioner. Thereafter, the petitioner came to know that the auto was seized by the Prohibition & Excise Inspector, Warangal, on an allegation that three persons were found in the Auto rickshaw transporting I.D. liquor of around 240 litres in eight rubber tubes, and a case was registered in FIR No.48 of 1995-96, dated 25.10.1995 of Prohibition & Excise Station, Warangal, under Section 34 (a) of the A.P. Excise Act. Accused No.3 in the above crime is the auto driver Mr. Babu. A show cause notice dated 30.10.1995 has been issued under Section 46(a) of the Excise Act to the driver cum owner Mr. A.Babu. The petitioner filed an application on 05.12.1995 before the 2<sup>nd</sup> respondent for release of the auto. But, the 2<sup>nd</sup> respondent passed the confiscation orders on 07.12.1995 without issuing any notice or opportunity to the petitioner

and later confiscation order has been passed on the reason that no explanation has been submitted.

4. Aggrieved thereby, the petitioner preferred an appeal before the 1<sup>st</sup> respondent and without appreciating the facts and the legal position and even without looking into the issue as to who is the owner of the vehicle and whether the notices were served before confiscation and also whether the owner of the vehicle, the petitioner herein, had knowledge about the alleged crime, the 1<sup>st</sup> respondent passed order, dated 11.09.1998, confirming the confiscation order of the 2<sup>nd</sup> respondent, dated 07.12.1995. Aggrieved thereby, the present writ petition is filed.

5. This Court perused the orders passed by the respondents. None of the orders disclose the involvement of the petitioner in the crime or the crime has taken place with the knowledge of the petitioner and further no notice has been served upon the petitioner before passing the confiscation orders, which is a gross violation of the principles of natural justice. The department has proceeded only basing on the extra judicial confession made by the co-accused and it is evident from the impugned order that the respondents have treated the driver as owner, which is factually incorrect and the orders passed by the respondents is without application of mind. Therefore, the order passed by the 2<sup>nd</sup> respondent is liable to be set aside.

6. For the reasons stated above, the writ petition is allowed setting aside the impugned order, dated 11.09.1998, passed by the 1<sup>st</sup> respondent confirming the order, dated 5.12.1995, passed by the 2<sup>nd</sup> respondent. Miscellaneous petitions, if any, pending shall stand dismissed. No order as to costs.

February 08, 2018  
KTL

T. AMARNATH GOUD, J