

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(SPECIAL ORIGINAL JURISDICTION)

Monday, the Twenty Eighth day of two thousand and five

PRESENT

The Honourable Sri Justice V.Eswaraiah

WRIT PETITION No. 15324 OF 2002

BETWEEN:

Thummala Satyanarayana S/o Mallaiah, age 36 years, Occ:
Agriculture, R/o Mannewar, Jalalpur (v) Veldurthi (M), Medak District.

...Petitioner

And

The Sub Inspector of Police, PS., Yadagirigutta, Nalgonda District.

...Respondent

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of writ of MANDAMUS declaring the action of the respondent in seizure of the petitioner's lorry bearing No.AP 12 T 7684 along with 740 blocks of plain jaggery equivalent to 100 quintals in FIR No.80/2002 dt.27-7-2002 as illegal and declare the petitioner's jaggery is in accordance with the Circular CR.No.4294/DPE/2001/C5, dt.12-4-2002 issued by the Commissioner of Prohibition and Excise.

For the Petitioner: Mr.Sai Ram Goud, Advocate.

For the Respondents: G.P.for Home.

The Court made the following :

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ORDER:

The petitioner is owner of the lorry bearing No.AP 12T-7684. The said lorry was seized by the Sub Inspector of Police, Yadagirigutta Police Station, Nalgonda District vide crime in F.I.R.No.80, dated 27-7-2002 for the offence punishable under Sec.34(e) of the A.P.Excise Act, alleging that the said lorry was found carrying black jaggery about 10 tones and Alum about 10 Kgs from Mangalparthy village of Veldurthy Mandal, Medak District to Shiva Krishna Kirana Marchant of Parkala of Warangal District.

Admittedly, the said crime was registered under Section 34(e) of the A.P. Excise Act. Under Section 34(e) of the Act, who ever in contravention of the Act or by any rule, notification or order issued or passed there under or of any licence or permit granted or issued under the Excise Act, uses, keeps or has in his possession any materials stills, utensils, implements or apparatus whatsoever for the purpose of manufacturing other than any intoxicant toddy are liable to be convicted and if the intoxicant involved in the offence is more than the quantity notified, the imprisonment of not less than one year and a fine of Rs.5,000/- may be imposed.

Under Section 45 of the A.P. Excise Act, whenever any offence has been committed, which is punishable under the A.P.Excise Act,

certain things are liable for confiscation. Under Section 46E, the Criminal Court jurisdiction has been ousted in respect of the receptacles, animals, vehicles and other conveyances used carrying such articles. As far as its release and confiscation is concerned, the Deputy Commissioner of Prohibition and Excise alone is empowered to entertain the applications and the Deputy Commissioner of Prohibition and Excise is competent authority to confiscate the same. Under Section 46 of the Act, any vehicle and receptacle is liable for confiscation under Section 45 and such article shall be seized by the Excise Officials and shall be produced without any unreasonable delay before the Deputy Commissioner of Prohibition and Excise having jurisdiction over the area and on such production, the Deputy Commissioner of Prohibition and Excise shall issue a show cause notice, then pass order of confiscation, against which an appeal lies to the Commissioner.

But, in the instant case, the Sub Inspector of Police, Yadagirigutta has not followed any provisions of the A.P., Excise Act and he has not produced the said lorry before the Deputy Commissioner, but on the other hand, he has produced the same before the Criminal Court, which has no jurisdiction at all either to confiscate or release the vehicle. Therefore, I am of the opinion that the action of the respondent in seizing, detaining and producing the vehicle before the Criminal Court is without jurisdiction, contrary to law and unsustainable.

Accordingly, the Writ Petition is allowed, directing the Sub Inspector of Police, Yadagirigutta Police Station to release the lorry bearing No.AP12T 7684 in favour of the petitioner and the bank guarantee furnished for the release of the said vehicle pursuant to the interim order is directed to be discharged. However, this order will not preclude the concerned authorities to take appropriate action according to law. No costs.

V.ESWARAIAH.J

Date: 28-02-2005.

Shr.

That Rule Nisi ordered on 20-8-2002 is made absolute.

Asst.Registrar.

To

1. The Sub Inspector of Police, PS., Yadagirigutta, Nalgonda District.
2. Two CCs., to the Government Pleader for Home.
3. Two C.D.Copies.