

HON'BLE SRI JUSTICE B.CHANDRA KUMAR

Crl.R.C.No. 1757 of 2013

ORDER:

Heard.

The learned counsel for the petitioner, relying on the judgments in cases between **P.SWARUPA AND OTHERS v. STATE OF ANDHRA PRADESH^[1]**, **JITENDRA PALNITKER v. STATE OF ANDHRA PRADESH^[2]** and **SUNDERBHAI AMBALAL DESAI v. STATE OF GUJARAT^[3]**, submitted that the Magistrate is having power to release the vehicle under Section 451 Cr.P.C. towards interim custody.

In the first cited judgment, this Court held as follows:

“(1) Where the crime is registered under the provisions of the Andhra Pradesh Prohibition Act, the Magistrate has got power to consider the petition filed under the provisions of Criminal Procedure Code viz., Section 451 Cr.P.C. for release of the vehicle involved in the offence.

(2) Where the crime is registered only under the provisions of the Andhra Pradesh Excise Act, 1968, the Deputy Commissioner of Excise alone is competent to pass orders of confiscation in respect of seized articles or vehicles and the Court will have no jurisdiction to exercise under Section 451 Cr.P.C. to order release of the vehicle seized.

(3) Where the crime is registered both under the provisions of the Andhra Pradesh Excise Act, 1968 as well as the provisions of the Andhra Pradesh Prohibition Act, 1995, a petition filed under provisions of Cr.P.C., viz., Section 451 Cr.P.C., for release of vehicle seized and it is contended that the offence exclusively falls under the A.P. Excise Act, the concerned Court has to first decide whether the offence committed is punishable under the A.P. Excise Act or the A.P. Prohibition Act. In case, the Court comes to the conclusion that the offence committed is punishable under the A.P. Excise Act then it cannot exercise power under Section 451 Cr.P.C. for order release of the vehicle. However, in case the Court comes to conclusion that the offence committed is punishable under the A.P. Prohibition Act, then the Court has got power under Section 451 Cr.P.C. to order release of the vehicle.

(4) Where the crime is registered under the provisions of the A.P. Excise Act, 1968 and the provisions of the A.P. Prohibition Act, 1995, and when there is no plea that the offence exclusively falls under the A.P. Excise Act, then the Court has got power under Section 451 Cr.P.C. to order release of the vehicle inasmuch as the A.P. Prohibition Act has got overriding effect over the A.P.

Excise Act.

19. In this case, it is not the case of the prosecution that crimes were registered exclusively under the A.P. Excise Act. On the other hand, the case of the petitioners and the record show that crimes were registered under the A.P. Prohibition Act and the A.P. Excise Act. In view of our above discussion, we think it just and proper to direct the respondents to release the vehicles on the condition of petitioners furnishing bank guarantee for the value of the vehicles assessed by the concerned Road Transport Authority. The petitioners shall not alienate the vehicles and shall produce them whenever they are directed to do so.

The Criminal Miscellaneous Petitions are disposed of accordingly.”

In the second cited judgment, this Court considered the scope of Section 46E of the Andhra Pradesh Excise Act, 1968 and observed as follows:

“13. Taking into consideration the above provisions of law, I have no hesitation in holding that when the person is charged under the Andhra Pradesh Prohibition Act, 1995, the Magistrate has all powers under the Act to deal with the accused and the articles used in the commission of the offence under this Act.

14. The Andhra Pradesh Prohibition Act, 1995 is a complete code. In spite of this fact, I am not able to appreciate as to why the Investigating Agencies charged the accused even under the Andhra Pradesh Excise Act. If the accused is charged under the Andhra Pradesh Excise Act, the prosecution has to show that the accused has evaded the Excise Duty in contravention to the law narrated in Andhra Pradesh Excise Act. Unless it is shown that he has violated the provisions of Andhra Pradesh Excise Act, the accused cannot be charged for any offence under the said Act.

15. Section 31 of the Andhra Pradesh Prohibition Act, 1995 reads as under:

“31. OVERRIDING EFFECT: Save as otherwise provided, the provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in the provisions of the Andhra Pradesh Excise Act 1968 (Act 17 of 1968) and the rules made thereunder for the time being in force.”

This section lays down that any inconsistent provision is found in the Andhra Pradesh Excise Act, contradicting the provisions of the Andhra Pradesh Prohibition Act, 1995, the provisions contained in Andhra Pradesh Prohibition Act, 1995 will prevail. For that reason also the Excise Officer or the Collector will have jurisdiction to pass an order of confiscation if the accused is unknown, and if the charge sheet is filed against the accused, only the Magistrate can pass the order of confiscation of articles, vehicles etc., involved in

the Andhra Pradesh Prohibition Act, 1995.”

16. Considering the above provisions of law, I hold that the Magistrate has jurisdiction to pass an order of release of the vehicle in favour of the petitioner by way of interim custody.”

In view of Section 31 of the Andhra Pradesh Prohibition Act, 1995 and in the light of the above-referred judgments, it is to be held that the Magistrate is empowered to pass orders of release of the vehicle by way of interim custody. Moreover, if the vehicles are exposed to rain and sun, they will be damaged.

In the circumstances, the impugned order is set aside and the vehicle bearing No.AP13 AA 7169 (Scorpio) shall be released in favour of the petitioner on condition of his executing a personal bond for a sum of Rs.2,00,000/- (Rupees Two Lakhs only) with two sureties for a like sum each to the satisfaction of the Judicial Magistrate of First Class, at Kalwakurthi, Mahabubnagar District and on further condition of depositing Registration Certificate of the vehicle with the lower Court. The petitioner shall not change the colour or shape of the vehicle and not alienate the vehicle pending disposal of the case. He shall produce the vehicle as and when required.

The Criminal Revision Case is, accordingly, allowed.

B.CHANDRA KUMAR, J

Dt: 30.08.2013

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[\[1\]](#) 1996(1) ALT CrI. 130

[\[2\]](#) 1995(3) ALD 80

[\[3\]](#) (2002) 10 SCC 283