

HON'BLE DR. JUSTICE K.G.SHANKAR

Criminal Revision Case No.927 of 2014

Judgment:

The petitioner sought for interim custody of his vehicle i.e. APE Cargo D600 Pickup Van bearing registration No.AP 36W 5469. He filed a petition under Section 457 Cr.P.C before the Trial Court. The accused in the case allegedly committed an offence under Section 34(e) of the Andhra Pradesh Excise Act, 1968. The learned Trial Judge returned the petition on the point of jurisdiction. Questioning the same, the present revision is laid.

2. In **P.Swarupa v. State of A.P.** [1], a Division Bench of this Court held that the Court has jurisdiction to entertain an application for interim custody of the property either if the case is exclusively registered under the provisions of the Andhra Pradesh Prohibition Act or under the provisions of the A.P. Excise Act and A.P. Prohibition Act. The Division Bench further clarified that if the case is laid exclusively under the provisions of the A.P. Excise Act, it is the Deputy Commissioner of Excise who is entitled to dispose of the property.

3. In **Public Prosecutor v. G.Marimuthu Konar** [2], a case was registered under the provisions of the

A.P. Forest Act. A lorry was seized under the provisions of the Forest Act. A learned single Judge of this Court held that the Magistrate has powers to dispose of the property under Section 44(4) of the Forest Act as well as under Section 457 Cr.P.C.

4. In **Ulli Bhaskar v. State of A.P.** [3], black jaggery and alum were seized under the provisions of the Excise Act and under the provisions of Prohibition Act.

The Court held that black jaggery and alum are not intoxicants and that their sale cannot be subject matter of punishment.

5. In **Chindura Muthaiah & Co., Kamareddy, Nizamabad District, A.P. v. Deputy Commissioner of Prohibition and Excise, Karimnagar, A.P.** [4], the Court ordered return of a vehicle involved in an offence under Section 34(e) of the Excise Act.

6. In an unreported decision in Criminal Revision Case No.2484 of 2012, dated 11-12-2012, **(M/s. Amruthavarshini Dairy Farms Pvt. Ltd. v. The State)**, the petitioner was involved in an offence under the Prohibition Act. On the basis of **P.Swarupa**'s case (*1 supra*), the Court considered it appropriate to return the vehicle. Further, in **Public Prosecutor v. G.Marimuthu Konar**'s case (*2 supra*), the Court held that

even when the property is seized under the provisions of the Forest Act, a Judicial Magistrate of First Class is entitled to grant interim custody of the vehicle under the provisions of Section 457 Cr.P.C. In view of these decisions, it is contended by the learned counsel for the petitioner that the petitioner is entitled to interim custody of the property.

7. Albeit it was observed in **P.Swarupa**'s case (*1 supra*) that the Court has no jurisdiction when the offence involved is under the provisions of the A.P. Excise Act, a different view was taken by this Court in **M/s. Amruthavarshini Dairy Farms Pvt. Ltd. v. The State** (*Crl.R.C.No.2484 of 2012, dated 11-12-2012*). In view of **M/s. Amruthavarshini Dairy Farms Pvt. Ltd. v. The State** (*Crl.R.C.No.2484 of 2012, dated 11-12-2012*), I consider that the Criminal Court has got jurisdiction to pass orders regarding the disposal of property, more so by way of interim custody.

8. Consequently, this criminal revision case is disposed of remitting the case to the Trial Court informing the Trial Court that the Trial Court has jurisdiction under Sections 451 and 457 Cr.P.C to dispose of the property involved. The Trial Court shall consider the application of the petitioner on merits considering that the Court has got jurisdiction to entertain the application and dispose of the same within 2 (two) weeks from the date of receipt of a

copy of this judgment. The miscellaneous petitions, if any, pending in this revision shall stand closed.

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Dr. K.G.SHANKAR, J.

29<sup>th</sup> April, 2014.

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- [1] 1995 (3) ALD 1090 (D.B.)
- [2] LAWS(APH)-1980-12-35/APLJ-1981-1-84
- [3] 2004 (1) ALD (Crl.) 561 (AP)
- [4] 2006 (2) ALD 367