

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION NO.17681 OF 2020

ORDER:

This writ petition is filed under Article 226 of the Constitution of India, questioning the proceedings issued by the 2nd respondent/Superintendent of Police, Anantapur, vide proceedings C.No.169/SEB-ATP/2020 dated 04.09.2020 demanding the petitioner to deposit Fixed Deposit Receipt (FDR) for an amount of Rs.13,50,000/- to release the seized vehicle bearing No.AP 02 TE 2999 and declare the same as illegal, arbitrary and consequently, direct the 3rd respondent to release the seized vehicle.

The petitioner is the owner of the lorry bearing No. AP 02 TE 2999. The petitioner purchased the lorry for transportation of contraction materials from Anantapur to Bengaluru. He engaged one lorry driver by name by name Kaligiri Naresh and cleaners by names Ganna Ramu and Ganna Lakshman for the said purpose. While the matter stood thus, on 16.08.2020 at 6.00 a.m, the 3rd respondent/Station House Officer, Tadipatri Police Station seized the said lorry at Yallanuru Road Bypass circle, near Shivalayam temple in Tadipatri Town, alleging that the Police, while discharging their duties of checking the vehicles at Tadipatri Town, they found 22 boxes containing 48,180 ml. capacity tetra packets of 8 p.m. whiskey and marts each totalling to 1056 tetra packets and the said bottles were brought from Karnataka State, without any license and permission from the A.P.Government, for selling them at higher rates in the State of Andhra Pradesh. Immediately, the 3rd respondent seized the vehicle along with the bottles, without affording any opportunity to the driver of the vehicle to explain the same. On the basis of police proceedings, registered a case in Crime No.624 of 2020 for the offence punishable under Section

34(a) of the Andhra Pradesh Excise Act (for short 'Excise Act'), 1968 and issued F.I.R.

It is further contended that the police proceedings dated 16.08.2020 and the F.I.R. are frivolous and contrary to the principles of natural justice. Seizure of the vehicle under police proceedings is a serious illegality. After seizure, the 2nd respondent issued notice to the petitioner vide proceedings in C.No.169/SEB-ATP/2020 dated 04.09.2020 directing the petitioner to furnish bank guarantee worth for Rs.13,50,000/-. It is contended that the petitioner purchased the vehicle under finance and taking loan and still loan amount is pending, thereby, insisting the petitioner to furnish security for Rs.13,50,000/- for deposit of FDR is unjust and illegal. Hence, the petitioner requested this Court to set-aside the condition to deposit the FDR worth Rs.13,50,000/- as illegal, arbitrary and consequently direct the 3rd respondent to release the vehicle as interim custody.

During hearing, learned Assistant Government Pleader for Home appearing on behalf of the respondents, did not file any counter, but advanced arguments.

During hearing, Sri P.S.P.Suresh Kumar, learned counsel for the petitioner contended that, imposing such restriction to deposit FDR worth Rs.13,50,000/- is penal in nature. Therefore, insisting to deposit FDR equivalent to the value of the vehicle i.e. Rs.13,50,000/- is arbitrary exercise of power by the 2nd respondent and such arbitrary exercise virtually amounts to denial of relief i.e. return of the vehicle or interim custody of the vehicle during pendency of the criminal proceedings. Hence, requested to issue a direction to the 3rd respondent to release the vehicle, setting-aside the condition referred above.

Whereas, learned Assistant Government Pleader for Home contended that, the Deputy Superintendent of Police, Prohibition & Excise

is the competent officer to issue direction, as the 2nd respondent/Superintendent of Police has got power to confiscate the property to the State either under Excise Act or Prohibition Act. Though, no power is conferred on the Superintendent of Police/2nd respondent for grant of interim custody of the vehicle, the Deputy Commissioner granted relief. In case, the accused are found guilty, the property is to be confiscated to the State. If the interim custody of the vehicle is given to this petitioner without insisting security for production of the vehicle for ordering confiscation to the State, there is no possibility of producing the vehicle in future and release the amount to the State and such power would remain as a provision in the Statute without any effective implementation and placed reliance on **P. Swarupa vs. State of Andhra Pradesh**¹ and requested to dismiss the writ petition.

There is no dispute regarding registration of crime for the offence punishable under Section 34(a) of the Excise Act in Crime No.624 of 2020 on the file of Ananthapuramu Police Station. Seizure of both vehicle and contraband from the vehicle, during inspection of the vehicle is also not disputed. Further, the vehicle was driven by lorry driver by name Kaligiri Naresh and cleaners by names Ganna Ramu and Ganna Lakshman. The same is evident from the police proceedings which is the basis for registration of a crime and issue of F.I.R against the said driver and cleaners of the vehicle.

The petitioner is disputing condition No.1 of the impugned notice, which reads as follows:

“That the owner shall furnish a fixed deposit receipt for Rs.13,50,000/- towards the value of the vehicle in favour of the Superintendent of Police, Ananthapuramu.”

The main contention of the petitioner is that, imposing such onerous condition virtually amounts to denial of relief to this petitioner and if, for

¹ 1995 (3) ALD 1090 (DB)

any reason, the case is ended in acquittal after full-fledged trial after some time, if the vehicle is allowed to expose to sun and rain, it will become derelict and useless, since the 3rd respondent/Station House Officer is not taking care of the vehicle for its preservation in good condition, thereby, substantial damage will be caused to this petitioner in case the vehicle is allowed to be in the custody of the 3rd respondent and requested to set-aside the condition in the impugned notice and also requested to release the vehicle.

Whereas, learned Assistant Government Pleader for Home contended that the Deputy Commissioner shall get the vehicle valued and insist for security for release of the vehicle or granting interim custody of the vehicle under Andhra Pradesh Prohibition and Excise Act under the relevant laws. Simply the 2nd respondent/Superintendent of Police followed the procedure laid down by the Full Bench and Division Bench of this Court and insisted for furnishing security in the notice impugned in the writ petition and it is in accordance with law.

On a bare look at the provisions of Prohibition Act and Excise Act, though Deputy Commissioner is competent to order confiscation of the property seized in connection with the cases under the Act after concluding criminal proceedings, no power appears to have been given to the petitioner for grant of interim custody of the vehicle.

In a similar situation, the Apex Court in **State (NCT of Delhi) v. Narender**² while dealing with the provisions of Delhi Excise Act and Delhi Prohibition Act, held as follows:

“.....On production of the seized property, the Deputy Commissioner, if satisfied that the offence under the Act has been committed, may order confiscation of such property. Therefore, under the scheme of the Act any vehicle used for carrying the intoxicant is liable to be confiscated and on seizure of the vehicle transporting the intoxicant, the same is required to be produced before the Deputy Commissioner, who in turn has been conferred with the power of its confiscation.

² Criminal Appeal No.25 Of 2014 dated 06.01.2014

23.....The position is made clear by the non obstante clause in the relevant provisions giving overriding effect to the provisions in the Act over other statutes and laws. The necessary corollary of such provisions is that in a case where the Authorized Officer is empowered to confiscate the seized forest produce on being satisfied that an offence under the Act has been committed thereof the general power vested in the Magistrate for dealing with interim custody/release of the seized materials under [CrPC](#) has to give way. The Magistrate while dealing with a case of any seizure of forest produce under the Act should examine whether the power to confiscate the seized forest produce is vested in the Authorized Officer under the Act and if he finds that such power is vested in the Authorized Officer then he has no power to pass an order dealing with interim custody/release of the seized material. This, in our view, will help in proper implementation of provisions of the special Act and will help in advancing the purpose and object of the statute. If in such cases power to grant interim custody/release of the seized forest produce is vested in the Magistrate then it will be defeating the very scheme of the Act. Such a consequence is to be avoided.

24. From the statutory provisions and the analysis made in the foregoing paragraphs the position that emerges is that the learned Magistrate and the learned Sessions Judge were right in holding that on facts and in the circumstances of the case, it is the Authorized Officer who is vested with the power to pass order of interim custody of the vehicle and not the Magistrate.”

The provisions of Delhi Excise Act, 2009 are almost identical to the Andhra Pradesh Excise Act. If, the principle laid down in the above judgment is applied to the present facts of the case, ordering to release the vehicle by the 3rd respondent is in accordance with law. The petitioner only questioned the condition of the notice impugned in this writ petition, which is extracted above, since it is an onerous condition.

No doubt, it appears to be an onerous condition, but when such power is conferred on the 2nd respondent to order confiscation of the vehicle after termination of the criminal proceedings, if for any reason, the vehicle is not produced, the ultimate loser is the State and this power conferred on the 2nd respondent will remain only on the statute book which cannot be enforced effectively by the 2nd respondent conferment of such power by provisions will become redundant or otiose. In those circumstances, the 2nd respondent may insist security for production of the vehicle after termination of the criminal proceedings against the accused, if the Trial Court found them guilty for the offences, so as to enable the 2nd respondent to order confiscation of the property to the State. Therefore, insisting security for grant of interim custody of the vehicle or

release of the vehicle as interim custody during pendency of the investigation or calendar case before the competent court is not an illegality. On the other hand, it is only to protect the interest of the State. Hence, I find that insistence of security from the petitioner is not an illegality.

The condition imposed to furnish a FDR for Rs.13,50,000/- towards the value of the vehicle i.e. Rs.13,50,000/- appears to be unjust and unreasonable, since it is difficult to furnish the security amid Covid-19. Therefore, to meet the ends of justice, the condition imposed by the 2nd respondent is modified as follows:

“The petitioner shall furnish immovable property security by executing a bond in favour of the 2nd respondent/Superintendent of Police, Anantapuramu or for the value of the vehicle, as estimated by the Motor Vehicle Inspector, Anantapuramu.”

The 2nd respondent/Superintendent of Police is directed to get the vehicle valued by Motor Vehicle Inspector concerned in the presence of the petitioner after serving a notice to the petitioner and on fixing value of the vehicle by the Motor Vehicle Inspector, the petitioner is directed to furnish immovable property security by executing a bond in favour of the 2nd respondent, strictly adhering to the Stamp and Registration laws, as per the value fixed by the Motor Vehicle Inspector and on production of such immovable property as security, the 2nd respondent/Superintendent of Police, Anantapuramu, is directed to release vehicle bearing No.AP 02 TE 2999, as interim custody.

With the above direction, writ petition is disposed of. No costs.

Consequently, miscellaneous applications pending if any, shall stand closed.

JUSTICE M. SATYANARAYANA MURTHY

Date: 30.09.2020

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