(1999) 11 DEL CK 0040

In the Delhi High Court

Case No : Criminal M. (M) . No. 496/99

Anoop Khanna APPELLANT

Vs

State RESPONDENT

Date of Decision : 30-11-1999

Acts Referred:

Citation : (2000) 1 AD 1004 : (2000) 83 DLT 516 : (2000) 52 DRJ 611

Hon'ble Judges : M.S.A. Siddiqui, J

Bench : Single Bench

Advocate : Mr. A.K. Mata, for the Appellant; Mr. J.S. Ahluwalia, for the Respondent

Judgement

M.S.A. Siddiqui, J.—By this petition u/s 482 Cr. P.C., the petitioner seeks quashing of the criminal proceedings emanating from the FIR No. 416/92 u/s 61 of the Punjab Excise Act registered at the Police Station Lahori Gate, Delhi and pending on the file of the Metropolitan Magistrate, Delhi.

2. Briefly stated, the facts giving rise to the petition are that on 15.11.1991, bottles of ''SOMAMRIT'', an Ayurvedic Medicine Manufactured by Dabur India (Ltd.), were recovered by S.I. Rajendra Singh of P.S. Lahori Gate from the petitioner''s shop. Representative samples of ''SOMAMRIT'' were sent to the Analyst, who reported that the v/v content of ethyl alcohol was in excess of the permissible limit, which is vocative of the notification dated 7.12.1991 issued under the Punjab Excise Act (hereinafter referred to as ''the Excise Act''). Investigation pursuant to the said FIR culminated into submission of a charge-sheet u/s 61 of the Act against the petitioner. On 30.10.1995, the learned Metropolitan Magistrate framed a charge under Sections 61/1/14 of the Excise Act against the petitioner. Aggrieved thereby, the petitioner moved the Additional Sessions Judge by filing a revision, which was dismissed by the order dated 18.10.1997. Not satisfied with the dismissal of the revision, the petitioner has come up before this Court u/s 482 Cr.P.C.

3. It is undisputed that the Dabur India is a limited company engaged in manufacture of Ayurvedic medicine and Allopathic medicaments along with cosmetics. The said company was granted a license for manufacturing SOMAMRIT and one of the ingredients of such preparation was alcohol. It is also undisputed that the representative sample of SOMAMRIT was examined by the Chemical examiner. who opined that it contains 11.998% to 2.49% volume by volume of alcohol. The Chemical Examiner further reported that SOMAMRIT has not been listed in the standard Ayurvedic Pharma-copoeia recognized by the Central Government. Learned counsel for the petitioner contended that the entire field in regard to medicinal preparations and drugs is covered by the Medicinal and Toilet preparations (Excise Duties) Act, 1955 (hereinafter referred to the Act of 1955) and the Drugs and Cosmetics Act, 1940 (hereinafter referred to the Act of 1940) and the dealers under these Acts cannot be proceeded against under the provisions of the Excise Act. According to the learned counsel, SOMAMRIT is an Ayurvedic medicine and is governed by the provision of the Act of 1955 and the Act of 1940. The Act of 1940 is a self contained one and provides for the issuance of licence, enumerates the conditions of license and mentions the contravention and violation of any of the provisions of the Act and the conditions of the licence; and, Therefore, the manufacturers and dealers in medicinal preparations if they commit any violation of the provisions of the Act, can be effectively proceeded against under the provisions of the very same Act without resorting to the provisions of the Excise Act. Learned counsel for the petitioner further contended that in those circumstances, the Excise Act has no application to the facts of the present case, and the criminal proceedings initiated against the petitioner are liable to be quashed. It is also contended that ''SOMAMRIT'' is an Ayurvedic medicine and the same is governed by the provisions of the Act of 1940, the representative samples had to be analysed by the Authority prescribed under the Act and as the representative samples had been examined by an Authority other than pre-scribed under the Act of 1940, no prosecution can be launched against the petitioner under the Excise Act. Reliance was sought to be placed on the decisions of the High Court of Andhra Pradesh in Cr. P.No. 137 & 138 of 1995 (Sriram & Anr. Vs. State of AP & Anr.) decided on 12.4.1996 and the Crl. Petition No. 533 of 1995 (Sriram & Anr. Vs. State of AP & Anr) decided on 3.9.1996. In both the Cases prosecution was launched under the A.P. Excise Act on the basis of the report of the Chemical Examiner and the same was quashed on the ground that the sample was not analysed by the Analyst appointed under the Act of 1940.

4. The above contentions of the petitioner are resisted by the learned counsel for the State contending, inter alia, that ''SOMAMRIT'' falls within the definition of liquor as defined in Sec. 3(14) of the Excise Act, the provisions of the Excise Act are certainly attracted in the case on hand as the petitioner was dealing in liquor without the requisite licence.

5. The question that has really to be determined in this case is which Act will prevail in the facts and circumstances of the case. In order to appreciate the rival

contentions raised in the case, it is necessary to consider the relevant provisions of the Act of 1940 as well as the Act of 1955. Insofar as the Act of 1955 is concerned, a perusal of the preamble indicates that this is an act to provide for the levy and collection of duties on medicinal and toilet preparations. This conclusion is borne out even by the provisions contained in various Sections thereof. This Act does in no way deal with the matter of regulating any law in regard to checking the misuse of medicinal preparations and drugs containing alcohol as alcoholic beverages.

6. Chapter IV of the Act of 1940 deals with the provisions relating to manufacture, sale and distribution of drugs and cosmetics. Sections 27 and 27-A provide for penalty for manufacture, sales etc. of cosmetics and drugs in contravention of Chapter IV and Section 31 provides for confiscation of the stock of the drug and cosmetic in respect of which contravention has been made. The Inspectors and other authorities of the Central Government have been empowered to inspect any premises, take samples of any drugs or cosmetic, enter and search at all reasonable times and examine any record, register or document or any other material in the business premises and exercise such other powers as may be necessary for carrying out the purposes of Chapter IV or any rule made thereunder. Chapter IV A of the Act deals with the provisions relating to Ayurvedic, Siddha or Unani drugs. Sections 33E, 33EE and 33EEA declare which of the drugs shall be deemed to be misbranded, adulterated and spurious respectively. Section 33EEB regulates manufacture for sale of Ayurvedic, Siddha or Unani drugs whereas Section 33EEC prohibits manufacture and sale of certain Ayurvedic, Siddha or Unani drugs. Section 33EED confers power on the Central Government to prohibit manufacture etc., of any Ayurvedic, Siddha or Unani drugs in public interest. Section 33F empowers the Central Government or a State Government to appoint Government Analysts for purpose of the Act. u/s 33G, the Central Government or a State Government may appoint Inspector for exercising powers under the Act. Section 33-I provides for penalty for manufacture, sale etc. of any Ayurvedic, Siddha or Unani drug in contravention of Chapter IV-A whereas Section 33K provides for confiscation of the stock of the Ayurvedic, Siddha or Unani drug in respect of which contravention has been made. Thus, neither in the Act in 1940 nor in the Rules made thereunder, we find any provisions prohibiting the Excise Authorities under the Excise Act or the police from proceeding against the dealers under the Act of 1940 if they contravene the provisions of the Excise Act. On the contrary , there is a specific provision in sub-section (3) of Section 32 of the Act of 1940, which completely demolishes the contention of the petition. Section 32(3) is as under.

"Nothing contained in this Chapter shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Chapter."

7. The expression "any other law" employed in sub-Section (3) is of wide amplitude and it embraces within its fold the Excise Act also. It is well settled

that a particular act or omission to do a thing may constitute an offence under two or more statutes. In such an event the competent authorities are not prevented from taking any action under the various statutes. Section 26 of the General Clauses Act provides that where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be punished under either or any of those enactments; but he shall not be liable to be punished twice for the same offence. The only restriction is indicated in Article 20(2) of the Constitution, which directs that no person shall be prosecuted and punished for the same offence more than once. As noticed earlier, the Act of 1940 does not provide for prevention of misuse of medicinal preparations and drugs containing alcohol as alcoholic beverages. The incidental provisions about manufacture, transport, possession and license etc. in the Rules framed under the Act of 1940 will have the effect of repealing only pro tanto similar provision in the Excise Act, i.e. only insofar as they have bearing with regard to levy and collection of duties and control of quality of medicinal preparations and drugs. They will not have the effect of repeating provisions of the Excise Act insofar as they relate to the prevention of misuse of medicinal preparations and drugs containing alcohol as alcoholic beverages. As a necessary corollary, provisions regulating misuse of medicinal preparations and drugs containing alcohol can be made by the State Government as also by the competent Authority in the exercise of the powers conferred on them by the Excise Act. Such an interpretation would be in conformity with the rule of interpretation about "harmonious construction", making an endeavor "to solve the conflict" and attempting a reconciliation as laid down by the Supreme Court in Harakchand Ratanchand Banthia and Others Vs. Union of India (UOI) and Others, . Thus the Excise Authorities or the police can proceed u/s 61 of the Excise Act or any other provision of the Excise Act against a dealer under the Act of 1940, if he commits any offence under the Excise Act, although he might also be liable under the Act of 1940. That being so, the plea of the petitioner that he cannot be proceeded against by the Police under the Excise Act even if he contravenes the provisions of the Excise Act is not tenable. With due respect to the learned Judges of the High Court of Andhra Pradesh. I regret that I have not been able to persuade myself to agree to the view taken by their Lordships in the case of Sriram & Anr. Vs. State of Andhra Pradesh & Anr. (supra). Consequently, the petitioner''s prosecution u/s 61 of the Excise Act cannot be quashed on the sole ground that the sample of "SOMAMRIT" was not examined by the Analyst appointed under the Act of 1940.

8. Next it was contended that ''SOMAMRIT'' is an Ayurvedic medicine and not an intoxicant as its alcohol content is only 11% v.v. which is permissible under the license granted to its manufacturer, namely, Dabur India (Ltd.). As per report dated 15.11.1991 of the Analyst, the percentage of the strength of Ethyl Alcohol in the sampled bottles of ''SOMAMRIT'' varied from 11.992 to 12.49% v/v. According to the prosecution, the volume to volume strength of the Ethyl Alcohol was in excess of the permissible limit, which contravenes the notification dated

7.12.1991 issued under the Excise Act. Where a particular drug or any other article is an ''intoxicant'' within the meaning of Section 3(12-a) or an ''intoxicant drug'' as defined in Section 3(13) of the Excise Act is a question of fact depending upon facts and circumstances. It is well settled that while exercising the inherent power u/s 482 Cr.P.C., he Court should not enter into the arena of disputed questions of fact.

In view of the foregoing discussion, the petition is dismissed.