

(2003) 02 AP CK 0098
In the Andhra Pradesh High Court
Case No : Writ Petition No. 12548 of 2000

B. Mohan

APPELLANT

Vs

The Sub-Inspector of Police, Prohibition and Excise P.S. and
Others

RESPONDENT

Date of Decision : 14-02-2003

Acts Referred:

Andhra Pradesh Excise Act, 1968 — Section 45, 46, 46A, 46C
Andhra Pradesh Prohibition Act, 1995 — Section 12, 13, 13(1), 13(2), 13A
Constitution of India, 1950 — Article 21, 226

Citation : (2003) 1 ALD(Cri) 727 : (2003) CriLJ 2436

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : K.G. Krishna Moorthy, for the Appellant; G.P., for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—The petitioner assails the order of the third respondent dt.6.3.2000 confirming the orders of the second respondent dt.14.8.1999 whereby and whereunder the petitioner's motor car bearing No. KA 34-M 355 was confiscated to the State under Sub-section (2) of Section 13 of the A.P. Prohibition Act, 1995 (for short "the Act").

2. The petitioner is the owner of the car bearing No. KA 34-M 355. On 24.7.1999 the Sub Inspector of Police, C. Belagal stopped the car of the petitioner at Mudumala - Polakal cross-roads at about 5 p.m. for the purpose of conducting vehicle check. On inspection, he found 14 polythene bags containing 4,027 arrack sachets. On inquiry, it was revealed that the driver is one Badigeri Nagaraju and the owner is Balu Basappa Mohan, who was traveling in the car. Interrogation revealed that the owner and the driver of the car purchased the arrack sachets from the arrack godown situated besides Sangam talkies of Bellary and started from Bellary for selling the arrack at Paldoddi of C. Belagal Mandal. The Sub Inspector registered a case in P.R. No. 36/98-99 of Prohibition

and Excise Station, Kodumur u/s 8(b) of the Act. The car and the arrack sachets were deposited in the absence of the second respondent.

3. The second respondent initiated proceedings for confiscation of the vehicle and issued a show cause notice u/s 13-A of the Act. The petitioner submitted his explanation on 14.8.1999 generally denying his involvement in the offence and specifically pointing out that his driver as well as his car are in no way concerned with the alleged seizure of the contraband; that the alleged seizure was not witnessed by any independent witnesses; and that both driver and himself, who only know Kannada language are not aware of the contents of the proceedings recorded by the police. The Deputy Commissioner rejected the case of the petitioner and ordered confiscation of the vehicle to the State. The petitioner filed an appeal u/s 13-C of the Act before the third respondent, who by impugned order dismissed the appeal and confirmed the order of the Deputy Commissioner of Prohibition and Excise.

4. In this writ petition Sri Mahadev, the learned counsel for the petitioner submits that no proper opportunity was given to the petitioner to prove his innocence. Secondly, he would submit that the petitioner has no knowledge of the involvement of his vehicle in the excise offence and therefore the vehicle cannot be confiscated. Reliance is placed by the learned counsel on the decision of a Division Bench of this Court in Shaik Gulam Rasool Vs. Government of A.P. and others, ; and a Full Bench decision of this Court in P. Gokul Anand Vs. Commissioner of Prohibition and Excise, and another decision of a Full Bench of this Court in V. Narayana Rao Vs. State of A.P. and Others,

5. The learned Assistant Government Pleader for Excise Department Ms. Ramani contends that the owner of the vehicle was found traveling in the vehicle and therefore he cannot plead ignorance. She also submits that the burden is on the petitioner to prove that he is not involved in the commission of offence and as the petitioner failed to discharge his burden, confiscation is justified.

6. As per Section 12 of the Act in case in which an offence has been committed against this Act, the liquor by means of which the offence has been committed shall be liable to confiscation along with the vehicle used to hold or carry the same. Section 13 of the Act provides for confiscation of things by the Prohibition and Excise officials in certain cases. Section 13-A of the Act requires a notice in writing being given to the person from whom the property is seized and providing an opportunity of making representation before an order of confiscation is passed. Section 13-C of the Act provides an appeal to the Commissioner of Prohibition and Excise against the orders of Deputy Commissioner.

7. It is relevant to note here the provisions contained in Section 13 (1), 13 (2) and 13-A of the Prohibition and Excise Act, which are as under.

8. Section 13:- Confiscation of things by Prohibition and Excise Officers in certain cases:

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force, where anything liable for confiscation u/s 12 is seized and detained under the provisions of this Act, the Officer seizing and detaining such property shall, without any unreasonable delay, produce the said seized property before the Deputy Commissioner of Prohibition and Excise, who has jurisdiction over the area.

(2) On production of the said seized property under sub-section (1), the Deputy Commissioner of Prohibition and Excise if satisfied that an offence under this Act has been committed, may whether or not a prosecution is instituted for the commission of such an offence, order confiscation of such property.

Provided that the Deputy Commissioner of Prohibition and Excise Act specially empowered in that behalf may accept such sum of money as may be prescribed in lieu of confiscation and release the animals or vessels or carts or other vehicles reasonably suspected of involvement in any offence falling under sub-clause (i) of Clause (b) of Section 8 of this Act.

9. Section 13-A: Issue of show cause notice:-

No order of confiscation of any property shall be made u/s 13 unless the person from whom the said property is seized-

(a) is given a notice in writing informing him of the grounds on which it is proposed to confiscate such property; and

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice.

10. Be it noted that Section 13, 13-A and 13-C are ipsissima verba with the provisions of Section 46-A and 46-C of the A.P. Excise Act, 1968. Under Sub-section (2) of Section 13 of the A.P. Prohibition Act, 1995 if the Deputy Commissioner of Prohibition and Excise is satisfied that an offence under the Act is committed, he may order confiscation of such property to the State. The satisfaction of the Deputy Commissioner is an objective satisfaction depending on the factors like involvement of the vehicle in the commission of an offence under the Prohibition Act, seizure of the vehicle from the person who was traveling in the vehicle at the time of commission of offence, the explanation submitted by the person pursuant to a show cause notice issued u/s 13-A and mens rea.

11. The Division Bench of this Court in Ghulam Rasool's case (supra 1), to which I was a member, considered the scope and power of the Deputy Commissioner u/s 46(2) of the A.P. Excise Act, which is in paramateria to Section 13(2) of the A.P. Prohibition Act. Having noticed the relevant provisions and also the relevant case law, it was held therein that the law providing for confiscation being expropriatory legislation, it requires strict interpretation and therefore before an order of confiscation was passed the authority must satisfy himself that all the ingredients therefore are satisfied including existence of mens rea.

12. In P. Gokul Anand's case (supra 2) a Full Bench of this Court considered Section 13(2) of the A.P. Prohibition Act as well as Sections 45 and 46 of the A.P. Excise Act. After considering the Division Bench judgment of this Court in Ghulam Rasool (supra 1), the Full Bench observed as under.

13. In view of the above, we have no hesitation to remit the matter back to the original authority for re-consideration of the case afresh. In any event, where an offence is said to have been committed, the owner of the vehicle can always show by producing evidence - both oral and documentary - that he had no knowledge therefore. The Supreme Court in the judgment in Amery Pharmaceuticals Vs. State of Rajasthan (20001) 4 SCC 382, has clearly held that interpretation of the statute must be in consonance with the principles underlying the fundamental rights and that any provision, which visits an accused with adverse consequences, without affording him any remedy to disprove the item of evidence, which stands against his innocence, is inconsistent with the philosophy enshrined in Article 21 and the Court should interpret in such a manner so as to dilute it to make it amenable to Article 21. The same principle should also be applied even in relation to confiscation proceedings.

14. Yet again, the same Full Bench, which considered. Gokul Anand's case (supra 2), in V. Narayana's case (supra 3) considered the scope of power of confiscation u/s 46 of the A.P. Excise Act and laid down as under.

15. The law providing for confiscation is an appropriatory legislation and the same is to be strictly construed. Before an order of confiscation is passed, the authority must satisfy itself that all the ingredients therefore are satisfied keeping in view the proposition of law in mind that confiscation is deprivation of property and existence of mens rea is also an essential ingredient and plays a vital role in such matters.

16. The Full Bench, therefore, laid down that mens rea is one of the relevant considerations before ordering confiscation and seizure of the vehicle. The law may be taken as a well settled that an order of confiscation, be it u/s 46(2) of the Excise Act or u/s 13(2) of the Prohibition Act, cannot be passed in a routine manner without applying mind to the facts of the case and without considering the submissions made by the person from whom the vehicle is seized in proper perspective.

17. When a person pleads that he has no knowledge and he is not involved in an excise offence, the burden lies on such person to prove the same. Insofar as Prohibition Act is concerned, by reason of Sections 7, 7-A and 8 of the Prohibition Act sale, purchase, possession and consumption of arrack is an offence in the State of A.P. It is not denied that when the vehicle was seized on 24.7.1999, the petitioner was very much present in the vehicle. Therefore, the offence u/s 7 is clearly made out. This is a condition precedent for exercise of power u/s 13(2) (Section 46(2) in Excise Act). When there is an allegation of commission of offence under Sections 7, 7-A r/w Section 8 of the Prohibition Act, the burden is

on the petitioner to establish that he has knowledge or involvement in connection with the offence alleged. The statement given by the driver of the petitioner before the reveals police that he and his owner purchased arrack at Bellary with an intention to sell in Paldoddi and other places. Though a vehement effort is made before the Deputy Commissioner, Commissioner as well as before this court that the petitioner has no knowledge of 4040 arrack sachets being present in the dicky, no material is placed in proof of the same. Indeed, the very fact that huge quantity of 4040 arrack sachets were seized from the dicky of the car belies the contention of the petitioner.

18. The averment that he had no opportunity of defending the case is liable to be rejected u/s 13-A. A show cause notice in writing is required to be given to afford an opportunity of making a representation. The petitioner had ample opportunity for verifying the records and producing evidence before the Deputy Commissioner. Having failed to do so, he filed the present petition under Article 226 of the Constitution contending that he has no knowledge of arrack being present in his car. It must be remembered that the powers conferred for confiscation of vehicles on excise officials is without prejudice to other provisions of the Excise Act. Whether or not the criminal prosecution is instituted, the vehicle involved in the offence is liable for confiscation. All the ingredients are very much present in the case. The order passed by the Deputy Commissioner as well the Commissioner.

19. The writ petition, for the above reasons, fails and is accordingly dismissed. No costs.