(2007) 08 AP CK 0072

In the Andhra Pradesh High Court

Case No : Writ Petition No. 15550 of 2007

Chundru Narayana APPELLANT

Vs

The Superintendent, Prohibition and Excise and Another RESPONDENT

Date of Decision : 07-08-2007

Acts Referred:

Andhra Pradesh Excise Act, 1968 — Section 11B, 11B(1), 11B(2)
Andhra Pradesh Prohibition Act, 1995 — Section 12, 13, 13A, 13B, 13C
Criminal Procedure Code, 1973 (CrPC) — Section 320(2), 397, 401

Citation : (2008) 2 ALD(Cri) 250

Hon'ble Judges : V. Eswaraiah, J

Bench : Single Bench

Advocate : K. Manikyala Rao, for the Appellant; G.P., for the Respondent

Final Decision : Dismissed

Judgement

V. Eswaraiah, J.—Petitioner seeks a Writ of Certiorari calling for the records relating to the proceedings in Rc.No.145/2007/A-4 dated 16.06.2007 on the file of the Prohibition & Excise, Superintendent in respect of C.C.No.2 of 2005 on the file of the Chief Judicial Magistrate - cum - Principal Assistant Sessions Judge, West Godavari District, Eluru and to quash the same and to direct the first respondent to compound the offence in C.C.No.2 of 2005.

2. Petitioner submits that the Inspector of Prohibition and Excise Station, Tadepalligudem, registered a case in Cr.No.24 of 1998-99 for the offence punishable u/s 8(b)(ii) of the Andhra Pradesh Prohibition Act, 1995 (for short ''the Act'') showing him as A-1 along with two others as A-2 and A-3. After completion of investigation, charge sheet has been filed, which was numbered as C.C.No.637 of 1999 on the file of the Special Judicial Magistrate of First Class, (Excise), West Godavari District, Eluru, now pending on the file of the Chief Judicial Magistrate of First Class-cum- Principal Assistant Sessions Judge, Eluru as C.C.No.2 of 2005.

3. A perusal of the charge sheet goes to show that the petitioner has got

agricultural land and also thatched shed nearer to aerodrome in Tadepalligudem limits and A-2 and A-3 are his close associates and they jointly indulged in illicit possession of huge quantity of non-duty paid liquor in the said shed of the petitioner. On 01.11.1998, the Excise officials on information about the illegal possession of the said non-duty paid liquor, they searched the thatched shed and found the petitioner coming out with hand bag, in which they found 30 nip bottles of non-duty paid liquor with company seals and labels of Vinay Club Whisky brand. The petitioner confessed that he along with A2 stored and stocked the liquor in his thatched shed. The excise officials seized 3,456 + 30 = 3,486 liquor bottles including samples and accordingly a case had been registered. Thus, it is the case of the Department that the petitioner along with two others illegally stocked the said liquor worth Rs.1,03,680/- in the thatched shed; therefore, they are liable for the offence punishable u/s 8(b)(ii) of the Act.

4. It appears that C.C.No.637 of 1999 on the file of the Special Judicial Magistrate of First Class (Excise), West Godavari District, Eluru was transferred and renumbered as C.C.No.2 of 2005 on the file of the Chief Judicial Magistrate -cum - Principal Assistant Sessions Judge, West Godavari District, Eluru. While so, the petitioner herein filed Crl.M.P.No.236 of 2006 in C.C.No.2 of 2005 seeking permission to compound the offence and the same was dismissed by order dated 10.01.2007 holding that the offence u/s 8(b)(ii) of the Act is not compoundable u/s 320(2) of the Code of Criminal Procedure, 1973 unless both the complainant and the accused agree to compromise the matter and the complainant intends to compromise or compound the offence but the complainant specifically opposed the request of the petitioner for compromise, therefore, the Court cannot compel the complainant to compromise or compound the offence. As against the said order dated 10.01.2007 the petitioner filed Crl.R.C.No.152 of 2007 before this Court u/s 397 read with 401 Cr.P.C and this Court while dismissing the said case on 02.02.2007 gave a liberty to the petitioner to approach the concerned authorities for compounding the offence and to pay the amount as fixed by the said officer and if the said offence is compounded further proceedings may have to be closed.

5. Pursuant to the said observations of this Court the petitioner field an application dated 22.03.2007 before the first respondent requesting him to compound the offence and intimate the amount payable by him towards the compounding fee. The first respondent considered the application of the petitioner and rejected the same by order dated 16.06.2007 stating that the liquor seized is more than 26 liters of Indian made Foreign Liquor, which cannot compounded as per the notification of the Government in G.O.Ms.No.1084 Revenue (Excise-II) Department dated 21.12.2004. Aggrieved by the said order, the petitioner filed this writ of certiorari.

6. Learned Counsel for the petitioner submits that as per the judgment of this Court in Ch. Vijaya Mohan Vs. Deputy Commissioner of Prohibition and Excise, (Hyderabad Division) and Others, the offence falling under Sections 8(a), 8(b)(i)

and proviso to Section 8(b)(ii) of the Act as it was in force or Section 9 of the Act are compoundable on accepting the sum of money as may be prescribed but not exceeding the maximum fine which can be imposed for the offence under the provisions of he Act by way of compensation. Therefore, as per the said judgment the impugned proceedings are liable to be quashed directing the respondents to compound the offence.

7. It is not in dispute that for the case registered against the petitioner for the offence punishable u/s 8(b)(ii) of the Act; u/s 7 of the Act, selling, buying, being in possession and consumption of liquor, otherwise than in accordance with the provisions of the Act, or as the case may be, the Andhra Pradesh Excise Act, 1968, is prohibited. Section 8 of the Act deals with punishment for buying, selling, consumption etc of liquors. The liquor includes every liquid consisting of or containing alcohol and any other intoxicating substance, which the Government may, by notification, declare to be liquor. It is also not in dispute that Indian made Foreign Liquor and Indian Liquor is liquor.

8. u/s 8(b) of the Act whoever, possesses, collects, buys, sells, transports, produces or manufactures any liquor other than arrack except in accordance with the provisions of the Excise Act or the terms of any rule, notification, order, licence, or permit issued thereunder, shall be prohibited. u/s 8(b)(i) of the Act where the liquor involved in the offence is less than such quantity as may be notified by the Government the period of punishment shall not be less than six months but which may extend up to three years or with fine which shall not be less than Rs.10,000/- or shall not be less than thrice the value of the liquor involved in the offence whichever is higher but which may extend up to six times the value of such liquor. Section 8(b)(ii) of the Act deals with punishment in respect of the persons, whoever, possesses, collects, buys, sells etc the liquor, where the liquor involved in the offence is not less than the quantity notified by the Government, the minimum punishment will be one year, which may extend up to five years and with fine, which shall not be less than Rs.20,000/- or shall not be less than thrice the value of the liquor involved in the offence whichever is higher but which may extend up to six times the value of such liquor.

Thus, Section 8(b)(i) of the Act deals with the punishment in respect of the persons for possession, collection, buying, selling, transporting, production or manufacturing the liquor, where such liquor involved in the offence is less than the notified quantity as notified by the Government whereas Section 8(b)(ii) of the Act deals with punishment in respect of the persons, whoever, possesses the liquor more than quantity notified by the Government.

9. Section 11-B of the Act deals with compounding of offences:

Under Section 11-B(1) the Collector or any Prohibition and Excise Officer specially empowered or entitled to accept from any person, who is reasonably suspected of having committed an offence falling u/s 8(b)(i), or proviso to Sub-clause (ii) of Clause (b) of Section 8 as it was in force or Section 9, a sum of money as may be prescribed but not exceeding the maximum fine, which can be imposed for the offence under the provisions of the Act by way of compensation for the offence, which may have been committed and in all cases in which the property has been seized as liable for confiscation under the Act, may release the same on payment of the value thereof as estimated by such officer. As per proviso to Section 11-B(1) if the property seized is liquor, such liquor shall not be released but shall be disposed in such manner as may be prescribed. However, such offence punishable u/s 8(b)(i) of the Act shall not be compounded without the prior approval of the Commissioner of Prohibition and Excise.

Under Section 11-B(2) on the payment of the sum of money or the value or both, such person shall set at liberty and all the property seized may be released and no proceedings shall be instituted or continued against such person in any criminal Court. The acceptance of compensation shall be deemed to amount to an acquittal and in no case any further proceedings shall be taken against such person or property.

10. u/s 12 of the Act, things that are liable for confiscation, in any case, the liquor by means of which an offence has been committed shall be liable to confiscation along with the receptacles, packages, coverings, animals, vessels, carts or other vehicles used to hold or carry the same. Thus, a reading of Section 12 of the Act makes it clear that the things liable for confiscation are receptacles, packages, coverings, animals, vessels, carts or other vehicles used to hold or carry the liquor by means of which the offence has been committed. Therefore, liquor as such is not liable for confiscation as the Government alone is the exclusive owner and possessor of all intoxicating liquors. Until any licence or permit is granted for manufacture, possession or sale of any liquor in favour of a person, the owner of any intoxicating liquor is the Government alone. Therefore, the question of confiscating liquor found in illegal possession of any person does not arise, as the Government itself is the exclusive owner of all intoxicating liquors. Therefore, the things that are liable for confiscation are only the things by means of which the liquor has been stored or carried, and by which the offence has been committed are liable for confiscation, such as receptacles, packages, coverings, animals, vessels, carts or other vehicles used to hold or carry the same and such things are liable for confiscation by the Deputy Commissioner of Prohibition and Excise u/s 13 of the Act. In the instant case, there are no things which are liable for confiscation as contemplated under Sections 12, 13, 13 A to D of the Act. Therefore, the liquor, which has been seized, is not the property liable for confiscation under the Act as contemplated under the second limb of Section 11-B(1) of the Act. Liquor seized from illegal possession of any person (accused) is spurious it will be destroyed and if it is not spurious it will be used by the Government.

11. As already stated, the punishment, in respect of persons found to be in illegal possession of liquor less than the quantity notified, is for a term, which shall not be less than six months but which may extend up to three years or fine

which shall not be less than Rs.10,000/- or shall not be less than thrice the value of the liquor involved in the offence, whichever, is higher but which may extend up to six time the value of such liquor. Therefore, the minimum punishment is six months in respect of the liquor, which is less than the quantity notified and the maximum period is three years. In lieu of punishment minimum fine that can be imposed is Rs.10,000/- or thrice the value of the liquor, whichever is higher and the maximum punishment of fine may extend up to six times the value of the liquor. Therefore, whoever is willing to compound the offence by paying fine amount by way of compensation as prescribed under Sections 8(a), and 8(b)(i) of the Act, than u/s 11-B(1) of the Act the competent officer is empowered to accept the compensation amount as prescribed under Sections 8(a) or 8(b)(i) or proviso to Sub-clause (ii) of Clause (b) of Section 8 or Section 9 of the Act.

12. The offence u/s 8(b)(ii) of the Act is not compoundable. By virtue of an amending Act 17 of 2000 the proviso to Sub-clause (ii) of Clause (b) of Section 8 has been omitted.

Therefore, the question of compounding the offence in respect of the persons found in illegal possession of liquor more than the quantity notified, does not arise. The punishment u/s 8(b)(i) of the Act varies from six months to three years and in lieu of punishment the minimum fine payable is Rs.10,000/- which may extend to up six time the value of such liquor. Therefore, the punishment can be by way of imprisonment or in lieu of imprisonment fine can be imposed depending upon the quantity and facts and circumstances of the case. Whereas u/s 8(b)(ii) of the Act the minimum punishment of imprisonment for a term not less than one year is mandatory and the imprisonment of term may extend up to five years also and in addition to imprisonment the minimum fine shall be an amount of Rs.25,000/- which may be extend up to six times the value of the liquor. Therefore, the offence u/s 8(b)(ii) of the Act is not provided for compounding u/s 11-B of the Act, as there is no provision of imposing the fine amount alone in lieu of punishment. However, as per the second limb of Section 11-B(1) in all cases in which any property has been seized as liable for confiscation under the Act (under Section 13 of the Act) may be released on payment of the value thereof as estimated by such officer. Therefore, in the instant case, the liquor is not a property, which is liable for confiscation under the Act and what is liable for confiscation is only the things by means of which the offence has been committed. Therefore, I am of the opinion that liquor as such is not liable for confiscation and the question of releasing the same on payment of value of the fine amount does not arise.

13. I have perused the judgment of My Learned Sister Justice G. Rohini in VIJAYA MOHAN''S case (supra) wherein the case relates to release of a tanker, which was involved in an excise offence and the owner of the said vehicle wanted to pay the value of the same, therefore, the Learned Judge rightly held that Section 11-B of the Act is in two parts; the first part provides for compounding of offences falling u/s 8(a) and (b) and Section 9 of the Act accepting a sum of money as

prescribed thereunder and the latter part of Section 11-B states that in all cases in which any property has been seized and liable for compensation may be released on payment of the value thereof, whereas in the operative portion of the said judgment, instead of stating "the value of the property" it was stated that on payment of compounding fee as estimated by the officer. However, the case deals with property, which is liable for confiscation but not with regard to liquor. Therefore, I am of the opinion that the said judgment is of no help to the petitioner as the case property in the instant case is not a property, which is liable for confiscation, as the liquor belongs to the Government itself. It is not the case of the petitioner that he is the owner or purchaser of the said liquor by means of any permit, licence or purchase order. Prima facie, the case goes to show that the petitioner was found in illegal possession of the said liquor.

14. A perusal of the Andhra Pradesh Excise (Compounding Offences) Rules, 2000 as amended by G.O.Ms.No.1084 Revenue (EX.II) Department dated 21.12.2004 goes to show that the Government notified the quantity of liquor for compounding the offence. The limit for Indian Made Foreign Liquor/Indian Liquor has been fixed at 26 liters whereas in the instant case, the liquor found in possession of petitioner is about 871 liters, the value of which is Rs.1,03,680/-. Therefore, the said offence punishable u/s 8(b)(ii) of the Act is not compoundable u/s 11-B of the Act and the said liquor is not a thing or property, which is liable for confiscation. If the offence is proved in the instant case, the minimum punishment that can be imposed is one year and the maximum punishment can be extended up to five years apart from the maximum fine amount up to six times the value of the liquor seized i.e. Rs.6,22,080/-. Therefore, the question of releasing the said liquor even on the payment of maximum fine amount does not arise.

The properties/things of the owners that are liable for confiscation are only liable to be released on payment of value, as there cannot be any objection for the department to release the said things if the owner of the said things/properties offers to pay the value of the same. A perusal of Section 8(b)(i) and 8(b(ii) of the Act goes to show that the punishment u/s 8(b)(i) of the Act can be fine amount in lieu of imprisonment whereas u/s 8(b)(ii) apart from the imprisonment fine amount is mandatory. Section 8(b)(i) of the Act deals with punishment where the liquor involved in the offence is less than the quantity of the liquor notified by the Government whereas Section 8(b)(ii) of the Act deals with punishment where the liquor involved in the offence is more than the quantity of liquor notified by the Government. The liquor is not liable for confiscation u/s 12 of the Act. Therefore, I am of the opinion that the liquor, which was found in illegal possession of the petitioner is more than the notified quantity, and for the said illegal possession of liquor, the petitioner is liable to be punished u/s 8(b)(ii) of the Act, which is not a compoundable offence u/s 11-B of the Act. Therefore, the petitioner is not entitled to any relief in this writ petition and the writ petition is liable to be dismissed.

The writ petition is accordingly dismissed. There shall be no order as

