

(1975) 04 AP CK 0027

In the Andhra Pradesh High Court

Case No : Criminal R.C. No. 518 of 1974 and Cr. R.P. No. 453 of 1974

D. Damodara Reddy

APPELLANT

Vs

The State of Andhra Pradesh

RESPONDENT

Date of Decision : 18-04-1975

Acts Referred:

Andhra Pradesh Education Act, 1982 — Section 36
Andhra Pradesh Excise Act, 1968 — Section 12, 12(3), 18, 3, 36
Constitution of India, 1950 — Article 20, 20(1)
Criminal Procedure Code, 1973 (CrPC) — Section 253
Mines Act, 1952 — Section 66, 73, 74

Citation : (1975) 04 AP CK 0027

Hon'ble Judges : Ramachandra Raju, J;Punnayya, J;Madhava Reddy, J

Bench : Full Bench

Advocate : Mr E. Ayyapu Reddy, for the Appellant;

Judgement

Sri Ramachandra Raju, J.—The petitioner is the proprietor of Desani Chemical Industries Hyderabad. He is sought to be prosecuted u/s 36 of the Andhra Pradesh Excise Act of 1968 read with Rule 7 of the Andhra Pradesh Rectified Spirit Rules, 1964. In C. C. No. 13 of 1974 on the file of the court of the Additional judicial First Class Magistrate, Vizianagaram. He filed a petition in that Court u/s 253 of the Criminal Procedure Code, 1898, to discharge him on the ground that on the facts as disclosed by the prosecute on he did not commit any offence and he cannot be convicted. When that petition was dismissed, he filed this revision. The petitioner was issued a permit by the Excise Commissioner on 23-2-1970 to take delivery of some quantity of rectified spirit from Sri Rama Sugars Limited Bobbili, and transport the same to the premises of his industry at Hyderabad, The charge against the petitioner is that while transporting the rectified spirit in sealed drums on 28-2-1970 in a lorry and when the lorry reached Vizianagaram he unloaded there ten drums from the lorry and therefore violated Rule 7 of the A.P. Rectified Spirit Rules, 1964 and accordingly he is punishable u/s 36 of the A. P. Excise Act, 1968.

2. Prior to the A. P. Excise Act, 1968, which came into force on 26-8-1968, Andhra Pradesh (Telangana Area) Abkari Act, 1316 Fasli was there. It was applicable only to the Telangana area. The A. P. Rectified Spirit Rules, 1964, were issued under that Act only. Under the A. P. Excise Act, 1968, no new rules were issued immediately. It is only subsequent to the commission of the alleged offence by the petitioner, rules for rectified spirits were issued under the A.P. Excise Act, 1968, and they came into force only on 27-10-1971. The offence for which the petitioner is now sought to be prosecuted is for violation of Rule 7 of the Rules issued under the Andhra Pradesh (Telangana Area) Abkari Act, which was repealed by the A. P. Excise Act, 1968. It is provided u/s 73 of the 1968. Act that sections 8 and 18 of the A. P. General Clauses Act, 1891, shall be applicable in respect of the repealed Act. It is provided u/s 81 of the A. P. General Clauses Act that where an act is repealed and reenacted, the Rules issued under the repealed Act shall be deemed, so far as they are consistent with the new Act, to have been published and issued under the provisions of the new Act. It is under this provision the prosecution wants to make rule 7 of the A. P. Rectified Spirit Rules, 1964, applicable to the permit issued to the petitioner and seeks to make him liable for violation of it.

3. Sri E. Ayyapu Reddy, learned counsel for the petitioner, by placing reliance on a Bench decision of the Andhra High Court in *In Re In Re: Lingareddi Venkatareddy and others*, has, however, argued that Article 20 of the Constitution prohibits conviction under a law which is only "deemed to be in force" and the rules framed under the Andhra Pradesh (Telangana Area) Abkari Act cannot be described as "law in force" within the meaning of Article 20 and the petitioner cannot be convicted by invoking Rule 7 of the A.P. Rectified Spirit Rules, 1964. It is provided under Article 20 of the Constitution that no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence. In the Bench decision referred to above, the learned Judges were considering the rules and regulations made under the Mines Act, 1923, which was repealed by the Mines Act, 1952, which were deemed to be in force by virtue of section 24 of the General Clauses Act. The learned Judges held that the phrase "law in force" in Article 20 must be understood in its natural sense as being the law in fact in existence and in operation as distinct from the law "deemed" to have become operative and the accused cannot be convicted under sections 66 and 73 of the Mines Act, 1952, for violation of the rules framed under the repealed Act of 1923 even if those rules are kept alive by virtue of section 24 of the General Clauses Act. In coming to this conclusion the learned Judges placed reliance on the decision of the Supreme Court in *Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya Pradesh*,

4. What all Article 20 (1) says is that no person shall be convicted for an act which was not an offence when it was committed but made an offence by enacting a law subsequently giving it retrospective effect. In the present case, the rule in question according to which the petitioner is sought to have

committed an offence cannot be said to be not in force when the act complained against the petitioner was committed. Though the Rules in question were framed under the repealed Act they continued to be in force under the new Act by reason of the provisions contained in section 73 of the new Act and section 18 of the A.P. General Clauses Act, if the rules were thus in force at the time the act complained against was committed and they were contravened, it would be violation of a law in force at the time of the commission of the Act. If the language used in Article 20 (1) is given its plain meaning there is nothing in it, either express or implied, to think that the expression "law in force" does not take in those laws which are in force by reason of deeming provisions. If the law is in force it should be enough in whatever manner it happened to be in force. In the Supreme Court decision referred to above, which was referred to in the Bench decision of the Andhra High Court, the law which was violated was not in force on the date of the alleged commission of the act but it was made applicable subsequently by giving retrospective effect. But it is different in the present case and the Bench decision of the Andhra High Court. The law was actually in force on the date of the commission of the act though on account of deeming provisions in the relevant General Clauses Act. Here, there is no question as to ex post facto legislation as in the Supreme Court case. With great respect I am afraid their Lordships of the Andhra High Court seem to have mis-applied the ratio of the decision in the Supreme Court. The decision of the Supreme Court referred to above was explained subsequently by the Supreme Court in *The Chief Inspector of Mines and Another Vs. Lala Karam Chand Thapar etc.*, In this decision the Supreme Court said that the contention that the contravention of the Indian Coal Mines Regulations, 1926, which were at the date of contravention "deemed" to be regulations under the 1952 Act was not a violation of a law in force on such date so that Article 20 (1) is a bar to the conviction is untenable. The Supreme Court said that the result of Article 20 (1) is that if at the date of the commission of an act, such commission was not prohibited by law then in force, no further legislation prohibiting that act with retrospective effect will justify a conviction for such commission. In other words, if an act is an offence at the date of commission, no future law can make it an offence. The Supreme Court said that in the previous case it was considering only the question whether a law made after the alleged act, can by providing for its retrospective operation, make itself "law in force" for the purpose of article 20 and it held that this could not be done. When it is said by the Supreme Court in the earlier case that "law in force" must be taken to relate not to a law "deemed to be in force" it should not be taken apart from its context. There the Supreme Court was dealing with a suggestion that as the Vindhya Pradesh Ordinance 48 of 1949 though enacted on September 11, 1949, ie, after the alleged offences were committed, was in terms made retrospective by section 2 which says that the Ordinance shall be deemed to have been in force in Vindhya Pradesh from August 9, 1949, and therefore when the act was committed subsequent to August 9, 1949, though prior to September 11, 1949, it would be an offence. In that context the Supreme Court there said that the expression "law in force" in Article 20 (1)

cannot take in law "deemed to be in force" by reason of giving it retrospective operation.

5. I may also add that Sri Ayyapu Reddy has also contended that the old Act was for the Telangana area only and the old Rules were framed under that Act only and as the new Act, 1968, is both for the Telangana area and the Andhra Area, the old Rules cannot be made applicable to the Andhra area.

6. Under these circumstances, the decision of the Andhra High Court being a binding decision on this Court appears to require reconsideration. Accordingly I refer this case to a Bench to be dealt with by it.

ORDER

Madhava Reddy, J.

7. This Criminal Revision case referred to us by our learned brother, Ramachandra Raju. J., raises a question "whether the petitioner can be prosecuted for an offence u/s 36 of the Andhra Pradesh Excise Act of 1968 read with Rule 7 of the Andhra Pradesh Rectified Spirit Rules, 1964 framed under the Andhra Pradesh (Telangana Area) Abkari Act which was repealed u/s 73 of the Andhra Pradesh Excise Act, 1968 but to which section 18 of the Andhra Pradesh General Clauses Act, 1891, was made applicable by the proviso thereto as if the said enactments were repealed and reenacted by the Andhra Pradesh Act ?"

8. The learned counsel for the petitioner contended before the learned single judge that the Andhra Pradesh Rectified Spirit Rules, 1964 and the Andhra Pradesh (Telangana Area) Abkari Act, 1356 Fasli were in fact not in force in Andhra area and even in Telangana area, the Hyderabad Abkari Act having been repealed, they did not survive. These rules could at the most be deemed to be in force by virtue of the proviso to Section 73 of the Andhra Pradesh Abkari Act, 1968 read with Sections 8 and 18 of the Andhra Pradesh General Clauses Act, and any prosecution and conviction under a law which is thus merely "deemed to be in force" is prohibited by Article 20 of the Constitution of India. Reliance for this proposition is placed on a decision of a Bench of the Andhra High Court in *In Re In Re: Lingareddi Venkatareddy and others*, which lays down as follows :

"The phrase" "law in force" in Act. 20 must be understood in its natural sense as being the law in fact in existence and in operation as distinct from the last "deemed" to have become operative by virtue of the power of legislature to pass retrospective laws.....The rules and regulations made under the Old Act it is true, continue in force, but, for the purpose of a criminal prosecution, they cannot be properly described as being "Law in force" because they are not rules made under the new Act, but are only to be deemed to be made thereunder..... therefore there could be no valid conviction for violation of any rules framed under the old Act and kept alive by S. 24 of the General Clauses Act.

9. In coming to that conclusion, the learned Judges of the Division Bench felt

that the Supreme Court In Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya Pradesh, had laid down that principle. We are unable to persuade ourselves, to share the view taken in In Re Lingreddy AIR 1956 Andhra 24 The case with which their lordships of the Supreme Court were concerned in The Chief Inspector of Mines and Another Vs. Lala Karam Chand Thapar etc., was one in which at the time when the act for which prosecution was launched was committed was not an offence. But by a subsequent legislative enactment which came into operation retrospectively, such acts were declared to be offences. In that context their Lordships observed :

The point actually debated in that case was whether Art. 20 interdicted a conviction under an "ex post facto" law.

10. In that context their Lordships took, the view that....the phrase "law in force" as used in Art. 20 must be understood in its natural sense as being the law in fact in existence and in operation at the time of the commission of the offence as distinct from the law "deemed" to have become operative by virtue of the power of legislature to pass retrospective law". In that case their Lordships were not concerned with the question "whether a prosecution could not be launched with respect to an act which is declared to be an offence under a rule kept alive on the date of the commission of that act by application of sections 8 and 18 of the earlier Andhra Pradesh General Clauses Act even while repealing Act". Such a question in fact arose for consideration before the Supreme Court in The Chief Inspector of Mines and Another Vs. Lala Karam Chand Thapar etc., were the contravention of Indian Coal Mines Regulations of 1926 which were deemed to be regulations under the Mines Act, 1952 on the date of the contravention was held to be not barred under Article 20 (1) of the Constitution. Dealing with that question, their Lordships explained the earlier decision of the Supreme Court in Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya Pradesh, that if at the date of the commission of an act, such commission was not prohibited by a law then in force, no future legislation prohibiting that act with retrospective effect will justify a conviction for such commission. In other words, if an act is not an offence at the date of commission, no future law can make it an offence". Their Lordships then proceeded to consider whether that principle had any application to a case where the previous law was kept alive even on the date of the offence by a deeming provision and observed ; "But how, on the facts of this case the accused can claim benefit of this principle embodied in Art. 20 (1) it is difficult to see. They are being charged under S. 73 and S 74 of the Mines Act, 1952 for the contravention of some regulations. Were these regulations in force on the alleged date of contravention. Certainly, they were in consequence of the provisions of S. 24 of the General Clauses Act, The fact that these regulations were deemed to be regulations made under the 1952 Act does not in any way affect the position that they were laws in force on the alleged date of contravention, The arguments that as they were "regulation" under the 1952 Act in consequence of a deeming provision they were not laws in force on the alleged date of contravention is entirely misconceived.

11. Equally misconceived is the submission that this Court's decision in Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya Pradesh, supports the arguments "Their Lordships then proceeded to point out the distinction in the following words :

It was considering only the question whether a law made after the alleged act, can by providing for its restrospective operation, make itself the law in force" for the purpose of Art. 20 ; and it held that this could not be done. The words "law in force" referred therein must be taken to relate not to a law "deemed to be in force, and this judgment should not be taken apart from its context. In the words that immediately follow the court was saying that "law in force" relates to a law factually an operation at the time, or what may be called the then existing law". The question to be asked is : Was the law said to have been violated in operation at the alleged date of violation ? The answer, in the cases before us, must be that it was Art. 20 (1) has therefore no application.

12. Having regard to the decision of the Supreme Court in Chief Inspector of The Chief Inspector of Mines and Another Vs. Lala Karam Chand Thapar etc., the decision of this Court in In Re: Lingareddi Venkatareddy and others, as observed by our learned brother Ramachandra Raju, J., requires reconsideration.

13. The learned Public Prosecutor, however, contended that in view of the Supreme Court decision The Chief Inspector of Mines and Another Vs. Lala Karam Chand Thapar etc., there is no impediment in the way of this court following that decision and disagreeing with the decision expressed in In Re Linga Reddy AIR 1956 Andhra. 24. It would be seen that the decision of the Division Bench In Re Linga Reddy AIR 1956 Andhra. 24 was not expressly overruled or even referred to in The Chief Inspector of Mines and Another Vs. Lala Karam Chand Thapar etc., We have to bear in mind the decision of the Supreme Court in T. Purushothamdas Thakkar v. R. Motilal Patel 1968 (II) SC J. 92 which while deprecating the practice of ignoring the principles laid down by the previous decisions of the Courts of coordinate jurisdiction pointed out:

Precedents which enunciate rules of law form the foundation of administration of justice under our system, it has been held time and again that a single judge of a High Court is ordinarily bound to accept as correct judgments of courts of co-ordinate jurisdiction and of Division Benches and of the Full Benches of this Court.....When it appears to a Single Judge or a Division Bench that there are conflicting decisions of the same court, or there are decisions of other High Courts in India which are strongly persuasive and take a different view from the view which prevails in his or their High Court, or that a question of law of importance arises in the trial of a case, the judge or the Bench passes an order that the papers be placed before the Chief Justice of the High Court with a request to form a special or Full Bench to hear and dispose of the case or the questions raised in the case.....Our system of administration of justice aims at certainty in the law and that can be achieved if Judges do not ignore decisions by Courts of co-ordinate authority or of superior authority.

14. Further in The Chief Inspector of Mines and Another Vs. Lala Karam Chand Thapar etc., their Lordships of the Supreme Court held "as a Division Bench they were bound by the decision of another Division Bench".

15. In view of the above, we feel that this matter requires to be considered by a Full Bench :

In the Criminal Revision Case, Mr. Ayyapu Reddy also urged that even if the Andhra Pradesh Rectified Spirit Rules, 1964 framed under the Andhra Pradesh (Telangana Area) Abkari Act are deemed to be in force, they were in force only in Telangana Area and not in the Andhra area of the State where the contravention is said to have been committed and consequently no prosecution could be launched, and also that the First Class Magistrate at Vizianagaram had no jurisdiction to entertain the complaint. But in as much as, if what is laid down in In Re Linga Reddy (2) is correct, these questions need not be gone into, we deem it advisable to refer the Criminal Revision case for consideration by a Full Bench.

16. Papers may be placed before the Honourable the Chief Justice.

ORDER

17. "In our view, the Judgment of the Division Bench in In Re Linga Reddy Addagada Raghavamma and Another Vs. Addagada Chenchamma and Another, must be considered to have been ordered in Chief Inspector of Mines v. Thapar AIR 1956 Andhra. 24. We do not think that it is necessary to restate our reasons. The case will now go back to the Division Bench".

18. In Pursuance of the order of the Full Bench the Case again came before Division Bench.

JUDGMENT

Madhava Reddy, J.

19. A charge-sheet was laid in the court of the Judicial First Class Magistrate, Vizianagaram against the petitioner and two others alleging the contravention of condition No. 8 of the licence, issued to the petitioner under Rule 7 of the Andhra Pradesh Rectified Spirit Rules which is an offence punishable u/s 36 (b) and (c) of the Andhra Pradesh Excise Act of 1968 read with Rule 7 of the Andhra Pradesh Rectified Spirit Rules. The other two accused are said to be liable for abetment of the said offence. The petitioner filed an application u/s 253 Cr. P.C., contending that on the facts alleged and in view of the position of law, no offence was made out against him and that he should be discharged.

20. The facts that led to the filing of the charge sheet may briefly be noticed :

The petitioner is the holder of a permit under the Andhra Pradesh Excise Act The 1st accused is a resident of Hyderabad and is the proprietor of Desani Chemical Industries, Hyderabad, a concern engaged in the manufacture of Chloroform etc. The 2nd accused is a lorry driver by profession and was engaged as a driver of

the lorry APV 5560 and the 3rd accused was the cleaner of the said lorry. The 1st accused herein after referred to as the petitioner was granted a permit to purchase and transport 2.000 litres of Rectified spirit per mensem for the months of January, February and March 1972. That permit was issued by the Commissioner of Excise, Hyderabad and under that permit he was permitted to transport the Rectified Spirit from Rama Sugars Limited, Bobbili to the premises of his Industry at Bandlaguda village, Kesavagiri Post, Hyderabad. The rectified spirit was intended to be used in the manufacture of Chloroform by Desani Chemicals, Hyderabad. As per Condition No, 8 of the said permit the accused is prohibited from breaking the bulk consignment of rectified spirit obtained from the supplier in transit and is bound to open the containers only in the premises in the presence of Sub-Inspector of Excise in-charge of the Industry. Rule 7 of the Andhra Pradesh Rectified Spirit Rules, 1964 also enjoins upon the petitioner to open the seals of the consignment in the presence of the local Excise Officer at the destination. In pursuance of the said permit the petitioner took delivery of 6,000 litres of Rectified Spirit from Rama Sugars Limited. Bobbili on 27-2-1970 and got it loaded in 30 drums, each containing 200 litres which were duly sealed and numbered. This consignment while being transported from Bobbili to the premises of the petitioner's factory at Bandlaguda, reached Vizianagaram in the early hours of 28-2-1970 in the lorry APV 5560 driven by Accused 2 and attended by Accused 3. Accused 1 followed the said lorry in a car. It is alleged that at the direction of Accused 1, the said lorry was stopped at Vizianagaram in the locality known as "Buchenna Koneru" centre. There, Accused 1 and Maddula Narayana, an arrack vender of Vizianagaram group of arrack shops had deliberations and at the direction of accused, Accused 2 and 3 allowed 10 sealed drums containing Rectified Spirit to be unloaded in the house of Maddula Narayana and six empty drums of the same size were loaded into the lorry in their place Thereafter the lorry left Vizianagaram. At Pendurthi junction when the lorry was intercepted and inspected, the seals of the twenty drums were found tampered with and six of the drums were found empty. On information the house of Maddula Narayana was searched and ten sealed drums which were part of consignment of Rectified Spirit lifted by petitioner were found and were seized and samples of the contents of the said drums were sent to the Chemical Examiner.

21. With regard to the charge-sheet filed on the above allegations, it was contended (1) that the Andhra Pradesh Rectified Spirit Rules, 1964 were framed under the Andhra Pradesh (Telangana Area) Abkari Act and the said Act having been repealed u/s 73 of the Andhra Pradesh Excise Act, 1968, no prosecution for contravention of any of the said Rules could be launched after the repeal of the said Rules, (2) that no offence was committed inasmuch as the Andhra Pradesh Rectified Spirit Rules were not in force in Vizianagaram or in any part of the Andhra Area of the State of Andhra Pradesh on the date of offence i.e., on 28-2-1970 for these Rules came into force in that area only on 27-10-1971, (3) that the Andhra Pradesh Rectified Spirit Rules which were made retrospectively

operative in the Andhra Area cannot from the basis of a prosecution for any act done at a time when they were not in force and (4) that in any event the Judicial First Class Magistrate's Court at Vizianagaram had no jurisdiction to entertain the case and try the accused.

22. The learned Magistrate has held that such a petition was not maintainable at that stage. It may also be noticed that earlier a writ petition No. 4336/72 was filed in the High Court inter-alia raising the same points. That petition was dismissed in September, 1973. A Writ Appeal No. 503/72 was filed but was withdrawn and dismissed. Thereafter some witnesses were examined by the Magistrate and before the trial concluded, the above petition u/s 253 Cr. P.C. was filed and the learned Magistrate dismissed it as premature.

23. So far as the first contention that the petitioner cannot be prosecuted u/s 3 of the Andhra Pradesh Excise Act, 1968 read with Rule 7 of the Andhra Pradesh Rectified Spirit Rules, 1964 framed under the Andhra Pradesh (Telangana Area) Abkari Act on account of its repeal under Sec. 73 of the Andhra Pradesh Excise Act, 1968 is concerned, it is covered by the decision of the Full Bench of this Court dated 24-2-1975 in this very case. Since the Andhra Pradesh Rectified Spirit Rules, 1964, framed under the Andhra Pradesh (Telangana Area) Abkari Act are saved by virtue of section 18 of the Andhra Pradesh (Telangana Area) Abkari Act there is no bar for prosecution of a person for the contravention of the Andhra Pradesh Rectified Spirit Rules, 1964.

24. As regards the question whether the alleged act of the petitioner in removing the ten sealed drums containing Rectified Spirit at Vizianagaram constitutes a contravention of the said rules is a question of fact which has to be determined on evidence. If as alleged by the Excise Authorities, those drums were removed at Vizianagaram, the petitioner who was permitted to transport the rectified spirit from Bobbili to the premises at Bandlaguda in Hyderabad District, the petitioner would certainly be guilty of contravening the condition of the permit issued to him. But for the permit issued in his favour which authorised him to transport 6,000 litres from Bobbili to Hyderabad, he would not have been entitled to lift any quantity of Rectified Spirit for being transported to Hyderabad. The fact that although he was permitted to transport the Rectified Spirit to Hyderabad he unloaded some of the quantity at Vizianagaram certainly constitutes a contravention of the condition of the permit. The contention of the petitioner, however, is that for transport of Rectified Spirit in the Andhra Area no permit is necessary cannot be accepted, for Section 12 of the Andhra Pradesh Excise Act, 1968 which was in force throughout the State lays down as follows:

S 12. Permits for transport of intoxicants :--

(1) The Excise Superintendent, may issue a permit for the transport of intoxicants.

(2) A permit under Sub-Section (1) may be either general for definite periods and kinds of intoxicants or special, for specified occasions and particular

consignments only.

Provided that a general permit, shall be issued only to persons licenced under this Act and may specify the maximum quantity of intoxicant that may be transported at any one time.

(3) Every permit under this section shall specify

(a) the name of the person authorised to transport intoxicants;

(b) the period for and the route through which the permit shall be valid;

(c) the quantity, strength and description of intoxicant for which it is issued and

(d) any other particulars and conditions which may be prescribed.

25. Explanation :-The expression "person authorised" in this sub section shall include his servants and other persons employed by him and acting on his behalf".

26. Section II which prohibits transport of intoxicants except under a permit reads as follows :

S. II. Regulation of Transport of intoxicants :-

(1) The Government may, by notification, prohibits the transport of an intoxicant or any kind of intoxicants from any area into any other area within the State, except under a permit issued u/s 12.

(2) No intoxicant exceeding such quantity as may be prescribed either generally or for any particular area, shall be transported, except under a permit issued u/s 12.

27. In view of Section 12, no person can validly transport Rectified Spirit in any part of the State of Andhra Pradesh without a permit. Inasmuch as Section 12 (3) lays down that every permit shall specify the person authorised to transport intoxicants and the route through which the permit shall be valid as also the quantity for which it is issued, the failure to transport the total quantity of Rectified Spirit to the place for which it was issued and the unloading of a part of the quantity at some other place prima facie constitutes a contravention of Section 12 (3) of the Act.

28. Faced with this situation Mr. Ayyapu Reddy, learned counsel for the petitioner contends that the petitioner did have a permit and he is not being charged with transporting Rectified Spirit without a permit but only with contravention of Cl. 8 of the condition of the permit imposed by the Rules which were not in force in the Andhra Area on the relevant date. But condition No. 8 is an integral part of the permit which makes it obligatory upon the permit-holder not to unload or break seals of any drums of Rectified Spirit except in the presence of Excise Officials at the destination. The permit was issued subject to that condition and the petitioner cannot ignore the conditions of the permit and claim right of

transport under the permit.

29. The question, however, would arise whether this contravention will be deemed to have been committed at Vizianagaram or at Hyderabad. The physical act of unloading, as alleged by the Excise Authorities was at Vizianagaram which is within the jurisdiction of the Judicial First Class Magistrate, Vizianagaram, and Prima facie he would be entitled to try the accused. If the contravention is deemed to be a condition of the permit issued by the Commissioner of Excise at Hyderabad, to a resident of Hyderabad and the contravention is of failure to transport the permitted quantity of rectified spirit to Hyderabad and disposal of the same at a different place, it may perhaps be argued that the contravention, if at all was one of not transporting the specified quantity of Rectified Spirit to Hyderabad. But Prima facie there is a contravention and this contravention was at Vizianagaram. Therefore the court of the Judicial First Class Magistrate in entertaining the case and trying it cannot be said to have acted wholly without jurisdiction. These are mixed questions of fact and law and the question of law arises out of evidence let in at the trial which can be properly be raised before the Magistrate who has already recorded major portion of the evidence. All these questions may be properly considered by the Magistrate after recording the entire evidence. However, it cannot be said that the proceedings before the Judicial First Class Magistrate wholly without jurisdiction and that on the facts alleged in the charge-sheet no offence if made out against the petitioner so as to warrant the exercise of revisional jurisdiction of this court at this stage. It may not be out of place to mention that earlier this court rejected a writ petition raising a similar contention as premature. This Criminal Revision case therefore fails and is accordingly dismissed. Nothing stated herein may be construed as either holding that the Magistrate at Vizianagaram has jurisdiction or that the petitioner is guilty of contravention of any of the conditions of the permit or of the Rules.