

(2002) 09 AP CK 0072

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 27115 of 1997 and 3914 of 2001

G. Nasar Reddy and Another

APPELLANT

Vs

Commissioner of Prohibition and Excise and Others

RESPONDENT

Date of Decision : 17-09-2002

Acts Referred:

Andhra Pradesh Excise Act, 1968 — Section 34, 46(2)
Andhra Pradesh Prohibition Act, 1995 — Section 8

Citation : (2002) 2 ALD(Cri) 677 : (2002) 6 ALT 90 : (2002) 6 ALT 20 : (2002) 3 APLJ 350

Hon'ble Judges : AR. Lakshmanan, C.J;V. Eswaraiah, J

Bench : Division Bench

Advocate : T. Raghunath Reddy and M. Ramalingeswara Reddy, for the Appellant; Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

AR. Lakshmanan, C.J.—Writ Petition No. 27115 of 1997 was filed by the owner of the vehicle for a Mandamus declaring the proceedings passed by the first respondent, the Commissioner of Prohibition and Excise, Andhra Pradesh, Hyderabad in Cr. No. 1964/97/DPE/B-2, dated 27-8-1997 in confirming the orders of the Deputy Commissioner of Prohibition and Excise passed in Proceedings Rc. No. 1008/95/A-3 dated 15-3-1997 in confiscating the petitioner's lorry bearing No. AP 21 T 1134 as illegal, arbitrary and violative of principles of natural justice.

2. According to the petitioner, the lorry owned by him was seized on 4-6-1995 by the Prohibition and Excise Inspector, Excise Station, Nellore on the allegation that the driver of the lorry was in possession of 18 liquor bottles when it was checked while coming from Nayudupeta to Markapur and consequently a crime was registered in Cr. No. 153/94-95 on the file of the third respondent and the driver and cleaner were arrested and later they were released on bail. Consequent upon the seizure of the vehicle, the third respondent has produced the said vehicle

before the second respondent. The request of the petitioner made to the second respondent for interim custody of the vehicle was rejected by the second respondent and subsequently Writ Petition No. 12099 of 1995 was filed seeking a direction for release of the vehicle. The said writ petition was disposed of on 20-6-1995 with a direction to the respondents to release the lorry bearing No. AP 21 T 1134 to the petitioner on his furnishing bank guarantee for the value of the vehicle as determined by the concerned Motor Vehicle Inspector and also on giving an undertaking not to alienate or dispose of the vehicle and to produce the same as and when required for enquiry.

3. It is contended by the learned counsel for the petitioner that the vehicle was released by the Motor Vehicle Inspector, who determined the value of the vehicle at Rs. 1,25,000/-, and accordingly, the petitioner has furnished bank guarantee in favour of the second respondent. On furnishing the said bank guarantee, the vehicle was released in favour of the petitioner. In the meanwhile, a show-cause notice was issued by the second respondent on 14-6-1995 to the petitioner calling for objections during the course of enquiry and the said notice was served on the petitioner in the last week of July, 1995 directing him to show cause within seven days as to why the above seized stock should not be confiscated to the Government u/s 46(2) of the A.P. Excise Act (for short "the Act"). The petitioner could not file his explanation to the show-cause notice before the second respondent as he was suffering from jaundice.

4. According to the learned counsel, when the search was made in the lorry as per the panchanama report prepared by the third respondent, the driver and cleaner were questioned about the alleged transportation of liquor bottles. The driver Pullaiah, since dead, and the cleaner have stated that they have purchased the bottles at Red Hills, Tamil Nadu and were carrying them to their village Markapur for selling on higher rate. Under such circumstances, a cyclostyled confiscation order was passed by the second respondent on 3-8-1995 by filling up the blanks and it was served on the petitioner in the last week of September, 1995. On remand also, again the second respondent passed an order of confiscation now impugned in proceedings Rc. No. 1008/ 1995/A-3 dated 15-3-1997 confiscating the seized property and the lorry without giving any opportunity to the petitioner as directed by the first respondent.

5. The learned counsel for the petitioner submitted that the second respondent can confiscate anything which is liable for confiscation u/s 45 of the Act, which was seized and produced before him. u/s 45 of the Act, there should be a decision that offence was committed and then only the second respondent will get jurisdiction u/s 46(2) of the Act, if he is satisfied that an offence was committed. In the present case, the criminal proceedings u/s 34(a) of the Excise Act and Section 8(b) of the Prohibition Act were initiated only against the driver and cleaner of the lorry and the same are pending. It is, therefore, submitted that the second respondent has no right to confiscate the lorry exercising powers u/s 46(2) of the Act. It is further submitted that the crime was registered against

the driver and cleaner by the third respondent and there is no case against the writ petitioner. The name of the petitioner was not even mentioned in the First Information Report. Hence, the lorry of the petitioner is not liable for confiscation as the petitioner is the owner and has no knowledge or collusion with the driver.

6. We see merit in the above submission. The alleged offence should have been committed by the driver and the cleaner in the absence of and without the knowledge of the petitioner, who is the owner of the lorry. It is further submitted that as per the contents of the First Information Report, the accused in the crime have purchased the alleged liquor bottles for their own purpose and for selling the same at higher rate at Markapur, whereas the petitioner is a resident of Peddadoranala village which is about 40 K.M. away from Markapur and he is no way connected with the alleged offence and there is no material against the petitioner.

7. We have perused the order passed by the authorities. The authorities have not conducted any enquiry before passing the impugned order and have not given any finding as to how the lorry is liable for confiscation and they simply relied on the records submitted by their subordinate officers and came to conclusion that lorry is liable for confiscation.

8. In our opinion, the petitioner in the facts and circumstances of the case has never had knowledge of transportation of liquor bottles by the driver and cleaner and that he was not made a party in the criminal proceedings and in the absence of the said fact, the first respondent has come to conclusion that the petitioner had knowledge of transportation of the liquor bottles. The finding, in our opinion, is bad and far from truth. The authorities have arrived at a wrong conclusion without any material when the petitioner had no knowledge of transporting liquor bottles.

9. Learned Government Pleader relied on the order passed by the first respondent and submitted that the transportation of the contraband through the above Vehicle was within the knowledge of the petitioner.

Relying upon the above statement learned Government Pleader stated that when there is clear finding, it is not for this Court to interfere with the said finding and cancel the order of confiscation. We are unable to accept or appreciate the said contention for the reason recorded in earlier part of our order.

10. A Full Bench of this Court comprising of the Chief Justice, G. Bikshapathy, J. and Ghulam Mohammed, J. in Writ Petition No. 157 of 2000 dated 11-7-2002, in an identical matter, held that when the owner of the vehicle has no knowledge about the contraband nature of the goods transported in the lorry by the passenger, the owner cannot be held liable and that under the said circumstances the Full Bench was of the view that mens rea was absent in so far as the writ petitioner/owner of the vehicle was concerned. The Full Bench allowed the writ petition and ordered release of the vehicle to the writ petitioner.

11. In the instant case, as already noticed, the owner of the vehicle was not made a party to the criminal proceedings and that the driver and cleaner themselves have categorically admitted that they purchased the contraband in Red Hills, Tamil Nadu, without the knowledge of the owner and therefore the owner cannot be made liable.

12. For all the above reasons, we allow Writ Petition No. 27115 of 1997 and quash the orders impugned in this writ petition. In the result, the bank guarantee executed by the petitioner shall stand cancelled. The respondents shall return the bank guarantee to the writ petitioner immediately and it is open to the petitioner to encash the bank guarantee.

13. So far as Writ Petition No. 3914 of 2001 is concerned, the driver himself has specifically stated in his statement that he had absolutely no knowledge about the liquor bottles concealed in plywood packs and he accepted the said packs for transportation in the vehicle for the said amount of Rs. 400/- only without the knowledge or consent or permission of the owner of the vehicle or lessee of the vehicle.

14. In view of the categorical statement, we have to necessarily hold that the owner, who is the writ petitioner herein, has absolutely no knowledge about the contraband goods transported by the driver. He was also not made a party to the criminal proceedings. Under such circumstances, following the judgment rendered by the Full Bench we allow Writ Petition No. 3914 of 2001 also and quash the orders impugned in this writ petition. During the pendency of the writ petition, the petitioner was asked to deposit a sum of Rs. 50,000/- by way of fixed deposit with the second respondent for release of the vehicle. Now that the writ petition is allowed and the second respondent is directed to return the fixed deposit receipt to the writ petitioner. No order as to costs.