(2001) 08 OHC CK 0004

In the Orissa High Court

Case No : Criminal Miscellaneous Case No. 7546 of 2000

G. Rama Rao Reddy — APPELLANT

Vs

State of Orissa and Others — RESPONDENT

Date of Decision : 14-08-2001

Acts Referred:
Bihar and Orissa Excise Act, 1915 — Section 47

Citation : (2001) 21 OCR 375 : (2001) 2 OLR 486

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : A. Mohanty, R. Rath, H.K. Tripathy and J.P. Patra, for the Appellant; Addl. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

L. Mohapatra, J.—The petitioner in this application u/s 482, Cr.P.C. has challenged the order dated 8.8.1995 passed by the learned J.M.F.C. (T), Berhampur rejecting the application of the petitioner for quashing the order taking cognizance as well as the order passed by the revisional Court, i.e. Special Judge (Vigilance), Berhampur dated 14.9.2000 dismissing the revision.

2. Case of the prosecution is that on 2.7.1995 at about 3.45 p.m. C.I. (Sadar), Berhampur while returning from duty detected eight bags of Jaggery (Guda) in a tempo. On being asked, the accused persons namely Iswar Ch. Sahoo and R. Gama Reddy could not explain about the possession and transportation of the said Jaggery (Guda). Since it was suspected that the said Jaggery (Guda) is not fit for human consumption or cattle feed, the accused persons were arrested and forwarded to the Court on 3.7.1995. On the same day, the petitioner was arrested and sixteen bags of Jaggery (Guda) containing 50 kgs. each in paper packets were seized from the godown on the information given by the aforesaid two accused persons that the said Jaggery (Guda) has been purchased from the petitioner. Further case of the prosecution case is that since it was suspected that said Jaggery (Guda) had been kept for preparation of liquor, offence u/s 47(f) of

the Bihar and Orissa Excise Act was made out. On the basis of the charge-sheet submitted by the Excise Officer, learned Magistrate took cognizance of offence u/s 47 (f) of the Bihar and Orissa Excise Act. The petitioner thereafter filed an application before the learned Magistrate for quashing the order taking cognizance on the ground that the Jaggery (Guda) seized from the godown of the petitioner was not kept for manufacturing intoxicating drugs or liquor and had been kept for sale under valid licence. Learned Magistrate in the impugned order dated 8.8.1995 held that the definition of ''liquor'' also includes Jaggery (Guda)'' which cannot be strictly called as a substance usable only for human consumption as food and on the aforesaid finding rejected the prayer. The petitioner thereafter preferred Criminal Revision Petition No. 153/95 which was subsequently registered as Criminal Revision Petition No. 61/98 before the learned Special Judge (Vigilance), Berhampur, Ganjam. Said revision was also dismissed by order dated 14.9.2000 holding that there is no infirmity in the order of the Magistrate in taking cognizance.

3. Shri Ashok Mohanty, learned counsel for the petitioner has challenged the impugned orders on the following grounds :

(i) The petitioner was in possession of the seized Jaggery (Guda) under a valid licence which had been kept for sale and there is no material on record to show that the said Jaggery (Guda) had been kept in the godown for the purpose of manufacturing intoxicating drug or liquor and therefore mere possession of Jaggery (Guda) is not an offence u/s 47(f) of the Bihar and Orissa Excise Act.

(ii) Even if the forwarding report is accepted and it is held that the materials seized are molasses at the relevant time of seizure, molasses had not been included in the definition of liquor and therefore no offence u/s 47(f) of the Bihar and Orissa Excise Act is made out.

4. It appears from Annexure-1 that the petitioner had been granted licence for sale of Jaggery (Guda) in the premises from which it had been seized and the licence was in force for the year 1995 ending on 31.12.1995. There is no dispute that the Jaggery (Guda) in question had been seized from the godown of the petitioner on 2.7.1995 when the licence granted in favour of the petitioner was valid. Therefore, possession of the Guda'' by the petitioner under the licence in Annexure-1 cannot be said to be illegal. The second question as to whether the ''Guda'' seized from the petitioner had been kept for the purpose of manufacturing intoxicating drug or liquor can be found out from the forwarding report. From the forwarding report, it appears that the officer who seized the Jaggery (Guda) was of the view that the same was not fit for human consumption. But there is no material to show that the ''Guda'' seized from the possession of the petitioner had been kept for the purpose of manufacturing any intoxicating drug or liquor. Therefore, in absence of any such material no presumption can be drawn and in my view no offence u/s 47(f) of the Bihar and Orissa Excise Act is made out.

This Court in a decision reported in Purusottam Sabara and Others Vs. State of Orissa, held that mere possession does not amount to commission of offence u/s 47(f) of the Bihar and Orissa Act. Prosecution must prove that the materials under possession of the accused was for the purpose of manufacturing intoxicating drug or liquor. There is absolutely no material on record to show that possession of Jaggery (Guda) by the petitioner was for the purpose of manufacturing intoxicating drug or liquor. On the other hand, licence in Annexure-1 shows that possession of the ''Guda'' was for the purpose of sale.

5. Coming to the second question raised by the learned counsel for the petitioner, it appears that the ''liquor'' has been defined in Section 2 of the Bihar and Orissa Excise Act, which includes all liquids consisting of or containing alcohol such as spirits of wine, spirit wine, fermented tari, pachwai and beer, and also unfermented tari and also and any other substance which the State Government may, by notification, declare to be liquor for the purposes of this Act. As on the date of seizure 2.7.1995 molasses had not been notified by the State Government as liquor. Learned Additional Government Advocate also does not dispute the said position. Therefore, even accepting the prosecution case that molasses had been seized, though seizure list indicates seizure of ''Guda'', no offence u/s 47(f) of the Bihar and Orissa Excise Act is made out as molasses at the relevant time of seizure had not been notified as liquor by the State Government.

I do not find a prima facie case to sustain the order taking cognizance u/s 47(f) of the Bihar and Orissa Excise Act.

6. I, therefore, allow the application, set aside the impugned orders passed by the Courts below and also set aside the order taking cognizance u/s 47(f) of the Bihar and Orissa Excise Act.