
(1991) 08 AP CK 0013
In the Andhra Pradesh High Court
Case No : C.P. No. 1212 of 1991

K. Kasappa Naidu

APPELLANT

Vs

The State of Andhra Pradesh

RESPONDENT

Date of Decision : 14-08-1991

Acts Referred:

Andhra Pradesh Excise Act, 1968 — Section 34
Criminal Procedure Code, 1973 (CrPC) — Section 29, 468, 468(2), 482

Citation : (1991) 08 AP CK 0013

Hon'ble Judges : G. Radhakrishna Rao, J

Bench : Single Bench

Advocate : K. Somakonda Reddy, for the Appellant; Public Prosecutor, for the Respondent

Judgement

1. This petition is filed under S. 482, Cr.P.C. to quash the proceedings in C.C. No. 115/90 on the file of the Court of the Additional Judicial Ist Class Magistrate, Nandikurtur.

2. The Sub-Inspector of Excise, Nandikotkur, conducted search of the house of the petitioner on 15-3-1989 and Chloral Hydrate was seized from his house. Therefore, a charge-sheet was laid against the accused on 6-8-1990 under S. 34(a) of the A.P. Excise Act ("the Act" for short) before the Court of the Additional Judicial First Class Magistrate, Nandikurtur. The learned Magistrate took cognizance of the case by taking it on file on 28-8-1990 as C.C. No. 115/90. The petitioner files CrI.M.P. No. 51 of 1991 objecting to the taking cognizance of the offence on the ground that the prosecution is barred by limitation u/s 468(2), Cr.P.C. The learned Magistrate dismissed the said petition. Thereupon the petitioner filed CrI.R.P. No. 13 of 1991 but the same was also dismissed on 29-5-1991 by the Ist Additional Sessions Judge, Kurnool. It is against the said order of the learned Sessions Judge, this petition is filed.

3. It is contended by the learned counsel for the petitioner in this Court that since the charge-sheet has been filed beyond one year on 6-8-1990 but the

seizure was made on 15-3-1989 more than one year from the date of registration of case by the Excise Officials, the learned Magistrate ought not to have taken cognizance of the same and ought not to have taken the case on file, and it is hit by the provisions contained in S. 468, Cr.P.C.

4. On the other hand, the learned Public Prosecutor contends that inasmuch as the offence alleged against the petitioner is triable by a Judicial Magistrate of Ist Class and a Judicial Magistrate of Ist Class is empowered u/s 29, Cr.P.C. to pass a sentence of imprisonment for a term not exceeding three years or fine not exceeding Rs. 5,000/- or both, the report of the investigating officer will not become time barred even if it is filed beyond the period of one year provided that it is filed within three years from the date of the detection of the offence.

5. The short point that falls for consideration in this petition is whether the charge-sheet filed against the petitioner beyond one year from the date of the alleged offence is hit by the provisions contained in Section 468, Cr.P.C.

6. The offence alleged against the petitioner was u/s 34(a) of the A.P. Excise Act. The old provisions was amended as per A.P. Act 10 of 1989 which has come into effect from 16-9-1988. The old provisions reads as follows :

"34. Penalties for illegal import etc. Whoever in contravention of this Act or of any rule, notification or order made, issued or passed thereunder or of any licence or permit granted or issued under this Act :

(a) to (h)

(i) in the case of an offence falling under clause (a) clause (e) and (gf) or clause (i) with imprisonment for a term which shall not be less than 2 years but shall not exceed 5 years and with fine which may extend to Rs. 5,000/-

Now by virtue of the amendment under Act 10/88 for the word "less than two years but it shall not exceed 5 years and with fine which may extend to Rs. 5,000/- the following words are substituted :

"less than six months and with fine which shall not be less than five time the value of the duty payable but shall not exceed ten times of such value in case where the value of duty is assessed."

7. Thus while under the old penal provision, the minimum sentence of imprisonment was prescribed to be not less than two years and the maximum ranging up to five years, under the new amended provisions, the minimum sentence prescribed is not less than six months though the provision is silent regarding the maximum term of imprisonment that can be imposed on a person found guilty of this offence, punishable u/s 34(a) of the Act.

8. Sub-section (2) of Section 468 of the Code of Criminal Procedure reads as follows :

"468(a) xx xx

(2) the period of limitation shall be :-

(a) six months if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence, is punishable with imprisonment for a term exceeding one year but not exceeding three years."

9. The Supreme Court in *State of Andhra Pradesh Vs. S.R. Rangadamappa*, held that where a statute prescribed a minimum sentence of imprisonment for an offence and does not provide for any exception and does not vest the Court with any discretion to award a sentence below the prescribed minimum under any special circumstances the Court could not have in its revisional jurisdiction reduced the sentence of imprisonment to less than the minimum prescribed.

10. The learned counsel for the petitioner argues that because the penal provision in question says that the term of imprisonment to be imposed on the offender shall not be less than six months, it should be construed and understood as six months only and not either less than six months or more than six months. He also further contends that had the amended penal provision said that the offence is punishable with a term of imprisonment for six months and with fine then the Court would have discretion to impose imprisonment for a period less than six months depending upon the peculiar circumstances of each case. I am afraid, I am unable to accept this contention as such an interpretation cannot be in accordance with the well established principles of Interpretation of Statutes. It is wrong to interpret that if a given penal provision says that a person found guilty of an offence shall be sentenced to suffer imprisonment for a term of six months, the Court is vested with a discretionary power to impose imprisonment for a period less than six months depending upon the circumstances of the case. In other words, the phrase "imprisonment for a term which shall not be less than six months" cannot under any circumstances be construed or understood as imprisonment for a term of six months and six months only. Such an interpretation will defy the principle that ordinary and natural meaning of words appearing in the statute is to be given when the language is plain and unambiguous. In other words, whenever the statute says that the imprisonment shall not be less than a particular term, the intention of the Legislature is that in a given case the Court may impose imprisonment for a greater period.

11. Dealing with the modern trend of construction of penal laws, Maxwell on Interpretation of Statutes 11th Edition at page 275 says :-

"The effect of the rule of strict construction might almost be summed up in the remarks that where an equivocal word or ambiguous sentence leaves a reasonable doubt of its meaning which the canons of interpretation fail to solve, the benefit of the doubt should be given to the subject and against the

legislature which has failed to explain itself. But yields to the paramount rule that every statute is to be expounded according to the expressed of manifest intention and that all cases within the mischiefs aimed at are, if the language permits, to be held to fall within its remedial influence."

12. Therefore, the contention of the learned Counsel for the petitioner that an offence punishable u/s 34(a) of the Act falls within the ambit of Section 468(2) (b), Cr.P.C. cannot be acceded to because the expression, a term of not less than six months cannot be construed as a term not exceeding one year especially when the penal provision says that the offender is punishable not only with imprisonment but also with fine.

13. Viewing from any angel, the contention of the petitioner that the trial Court ought not to have taken cognizance of the offence and ought not to have taken on file the charge sheet or the report of the investigation filed by the Sub-Inspector of Excise, as it was barred by limitation inasmuch as it was filed beyond the period of one year from the date of the detection of the alleged offence cannot be sustained.

14. The learned Additional Sessions Judge has elaborately dealt with the points raised and has given very cogent and convincing reasons for rejecting the plea of the petitioner-accused.

15. This petition fails and it is accordingly dismissed.

16. Petition dismissed.