(2014) 11 AP CK 0018

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 8904 of 2014

Koppula Nagi Reddy — APPELLANT

Vs

The State of Telangana — RESPONDENT

Date of Decision : 07-11-2014

Acts Referred:

Andhra Pradesh Excise Act, 1968 — Section 2, 34, 34(e)
Andhra Pradesh Prohibition Act, 1995 — Section 7(a), 8(e)

Citation : (2015) 1 ALD(Cri) 593 : (2015) 3 ALT(Cri) 386

Hon'ble Judges : K.G. Shankar, J

Bench : Single Bench

Advocate : Ramidi Sathyanarayana, Advocate for the Appellant

Judgement

Dr. K.G. Shankar, J.—Quashment of charge-sheet in C.C. No. 209 of 2013 on the file of the Judicial Magistrate of First Class, Sathupally, Khammam District is questioned by the 7 accused arrayed in the case. They allegedly committed an offence under Section 34(e) of the Andhra Pradesh Excise Act. The petitioners/ accused allegedly possessed 81 bags of black jaggery and 2 bags of alum meant for sale. The learned counsel for the petitioners contended that in view of the Circular of the Commissioner of Prohibition and Excise, Andhra Pradesh, Hyderabad, dated 22-12-2001 and also in view of the observations of this Court in various cases, the possession of alum and black jaggery per se are not punishable under Section 34(e) of the A.P. Excise Act and that the very charge-sheet is therefore liable to be quashed.

2. Memo in CR. No. 4294/DPF/2001/C5, dated 22-12-2001 issued by the Commissioner of Prohibition and Excise clarified that consignments of black jaggery covered by way bills and permits issued by the Market Committees are not prima facie liable for seizure and that the Excise officials however might enquire about the end use of jaggery. G.O.Ms. No. 1929, Revenue (CT-II) Department, dated 27-12-2006 included jaggery as entry No. 52 in Schedule-I and omitted the same from serial No. 30 in Schedule-IV of the Andhra Pradesh

Value Added Tax Act, 2005. In Memo No. 47802/Ex. III. 1/2006-13, Revenue (Ex. III) Department, dated 20-12-2010 ordered that black jaggery or rotten jaggery or any other form of jaggery should be considered as agricultural produce or its by-product and that the proposal of the Excise Department to include rotten jaggery as "material" within Section 2 of the Andhra Pradesh Excise Act, 1968 as an item used for the manufacture of Illicit Distilled Liquor has not been accepted. These are the 3 Memos on the basis of which, the learned counsel for the petitioners submitted that possession of black jaggery or alum cannot be treated as commission of an offence under Section 34(e) of the A.P. Excise Act.

3. In Criminal Petition No. 11064 of 2010, dated 08-11-2010, it was observed that mere possession of black jaggery did not constitute an offence under the provisions of the Excise Act. Through orders dated 30-4-2010 in Crl. P. No. 52 of 2010, on the basis of orders in Crl. P. No. 57 of 2006 holding that the seizure of black jaggery and alum were illegal under Section 34 of the A.P. Excise Act and under Sections 7(a) and 8(e) of the A.P. Prohibition Act. In Crl. P. No. 7981 of 2012, dated 19-11-2012, it was recorded that mere possession of black jaggery and alum were not offences within Section 34(e) of the A.P. Excise Act. In Crl. P. No. 9249 of 2010 and batch, orders were passed by this Court on 20-9-2010 that sale of jaggery cannot be treated as an offence either under the A.P. Excise Act or under the A.P. Prohibition Act. In Crl. P. No. 13313 of 2010 and batch, dated 11-10-2012, this Court once again recorded that prosecution of accused who were in possession and were selling jaggery for the purpose of preparing I.D. Liquor was not permissible. Applying the analogy in the other cases, this Court quashed the First Information Reports (FIRs).

4. It is contended by the learned counsel for the petitioners, on the basis of these decisions and the Government Orders that mere possession of black jaggery or alum cannot lead to prosecution under Section 34(e) of the A.P. Excise Act. It was recorded in Crl. P. No. 7981 of 2012 that not only possession, but sale of black jaggery and alum are not punishable under the provisions of the A.P. Excise Act. Further, the mediators'' report, even if the same is accepted at its face value, merely shows that the petitioners were in possession of black jaggery and alum. The mediators'' report does not recite that the petitioners were in possession of the material with a view to sell the same for the preparation of I.D. Liquor. Mere possession of black jaggery or alum is not punishable in view of the Government Orders as well as in view of the decisions of this Court. As rightly submitted by the learned counsel for the petitioners, this case in fact is covered by earlier decisions of this Court in Crl. P. Nos. 11064 of 2010, 52 of 2010 and 7981 of 2012 and other cases. I therefore consider that the petitioners cannot be prosecuted for the offences under the provisions of the A.P. Excise Act for possessing black jaggery and alum. The charge-sheet consequently is liable to be quashed.

5. Accordingly, this criminal petition is allowed. The charge-sheet in respect of

C.C. No. 209 of 2013 on the file of the Judicial Magistrate of First Class, Sathupally, Khammam District is quashed. The miscellaneous petitions, if any, pending in this petition shall stand closed.

