

(2011) 12 AP CK 0093

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 6908 of 2009

Kundarapu Krishna

APPELLANT

Vs

The State of A.P. And Y. Rajendra Prasad, Head Constable
(HC No. 1402)

RESPONDENT

Date of Decision : 28-12-2011

Acts Referred:

Andhra Pradesh Excise (Powers and Duties) Rules, 1972 — Rule 2(3), 3
Andhra Pradesh Excise Act, 1968 — Section 34, 52, 53, 72
Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2012) 2 ALD(Cri) 118 : (2012) 3 ALT(Cri) 99

Hon'ble Judges : G. Krishna Mohan Reddy, J

Bench : Single Bench

Advocate : A. Ravinder, for the Appellant;

Final Decision : Allowed

Judgement

G. Krishna Mohan Reddy

1. This Criminal Petition is filed by the petitioner/accused No. 5 (For short, "A-5") u/s 482 of Cr.P.C. seeking to quash proceedings in Crime No. 141 of 2009, pending on the file of Sangem police station, Warangal district, registered for offence punishable u/s 34 (a) of the A.P. Excise Act, 1968 (For short, "The Act"). Whereas the petitioner is A-5, the respondent No. 2 is the complainant in the Criminal Case. For the sake of convenience, I refer the parties as arrayed in the Criminal Case from now onwards.

2. The case of the prosecution in brief is as follows : On 20-08-2009 as per the instructions of Excise Circle Inspector, Mamnur the complainant along with P.C. Nos.1558 and 2040 conducted patrolling at Thimmapur village, having got reliable information that A-1 to A-4 were selling liquor purchased from A-5 at their kirana shops without any license and valid permission, surprised the house/ kirana shop of A-5 and found Indian Made Foreign Liquor (For short, "IMFL") and seized from A-1 to A-4 the following material (bottles) in the presence of two

mediators at Thimmapur village :

- 1) Officers choice whisky full bottles 750 ML - 4.
- 2) BP whisky full bottles 750 ML - 3.
- 3) AC premium whisky full bottle 750 ML - 1.
- 4) AC whisky quarter bottles 180 ML - 18.
- 5) Officers choice whisky quarter bottles 180 ML - 29.
- 6) MC whisky quarter bottles 180 ML - 4.
- 7) IB whisky quarter bottles 180 ML - 4.
- 8) MC quarter bottles 180 ML - 4.
- 9) Kingfisher strong beers 650 ML - 6.
- 10) Kingfisher light beers 650 ML - 6.
- 11) Kingfisher small beers 330 ML - 5.
- 10) Haywards 5000 beers 650 ML - 4.
- 11) Royal challenge beers 650 ML - 3.

According to the prosecution, A-1 to A-4 confessed before the police that the material kept for sale was actually purchased from the shop of A-5 and thereby A-1 to A-5 committed the alleged offence punishable u/s 34 (a) of the Act.

3. It is the contention of learned counsel for A-5 that admittedly, A-5 got valid and subsisting license to sell the liquor in retail in respect of which, filed a copy of Form-A4 issued vide proceedings in license No. 17/2008-2010, dated 28-06-2008 by the Prohibition and Excise Superintendent, Warangal and by virtue of Section 72 read with Sections 52 and 53 of the A.P. Excise Act, 1968 and A.P. Excise (Powers and Duties) Rules, 1972 only the concerned Excise Inspector got right to seize the material and further pertinently only on the basis of the so called confession given by A-1 to A-4, A-5 was impleaded in this case but that confession is not admissible in evidence and therefore no case is made out against A-5 and accordingly, the proceedings in so far as A-5 is concerned are liable to be quashed.

4. On the other hand, it is the contention of learned Additional Public Prosecutor appearing for the respondents-state that in fact on the instructions given by the concerned Circle Inspector only the Head-constable went and seized the material and therefore there was compliance of law and it is important that the investigation of the case is not yet completed and during that necessary material pertaining to the case on hand maybe seized from A-5 and there are no circumstances to quash the proceedings as prayed for.

5. The point for consideration is whether sufficient grounds are there in order to

quash the proceedings as prayed for?

6. Section 52 of the A.P. Excise Act, 1968 reads as follows :

Power to enter and inspect places of manufacture and sale :-The Commissioner or a Collector or any Prohibition and Excise Officer not below such rank as may be prescribed, or any Police Officer duly empowered in that behalf, may, -

(a) enter and inspect, at any time, by day or by night, any place in which any licensed manufacturer, manufactures or stores any intoxicant, and

(b) enter and inspect, at any time, within the hours during which sale is permitted, and at any other time during which the same may be open, any place in which any intoxicant is kept for sale by any person holding a license under this Act; and

(c) examine the accounts and registers, and examine, test, measure or weigh any material, stills, utensils, implements, apparatus, or intoxicant found in such place.

7. By virtue of Rule 2 (3) of A.P. Excise (Powers and Duties) Rules, 1972 (any officer of the Revenue Department of and above the rank of Tahsildar and) every Police Officer of and above the rank of Deputy Superintendent having jurisdiction over the place, is empowered to exercise the powers u/s 52 of the Act. Further, by virtue of G.O.Ms. No. 515, Revenue (Ex.II) Department, dated 28-08-2002 the said sub-rule was omitted. Further, by virtue of Rule 3 of the same rules any Excise Officer not below the rank of Sub-Inspector of Police or any Police Officer of and above the rank of an Inspector and any officer of the Revenue Department of and above the rank of a Deputy Tahsildar having jurisdiction over the place may seize such material.

8. Therefore, the seizure of the contraband material by the Head-constable is not tenable in law. The question of delegating the powers to the Head-constable to seize the material got not authentication. No authority is placed before this Court in that context. Further, the license filed on behalf of A-5 provides that he got authority to sell the Indian made foreign liquor. Hence, in view of the facts and circumstances of the case, sufficient material is not there to prosecute A-5, as per law. Hence, the proceedings are liable to be quashed. Accordingly, the criminal petition is allowed quashing the entire proceedings in Crime No. 141 of 2009 pending on the file of P.S. Sangem, of Warangal District, insofar as A-5 is concerned.