
(1995) 10 AP CK 0052

In the Andhra Pradesh High Court

Case No : Criminal Miscellaneous Petition No's. 3193 and 3249 of 1995

P. Swarupa and

APPELLANT

Vs

State of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 20-10-1995

Acts Referred:

Constitution of India, 1950 — Article 47

Criminal Procedure Code, 1973 (CrPC) — Section 451, 452, 482

Citation : (1996) CriLJ 2607

Hon'ble Judges : Y.V. Narayana, J;Y. Bhaskara Rao, J

Bench : Division Bench

Advocate : G. Satyaveer Reddy, M. Yadi Reddy, M.V.S. Suresh Kumar and M.R.S. Srinivas, for the Appellant; Public Prosecutor, for the Respondent

Judgement

Y. Bhaskar Rao, J.—Crl.M.P. No. 3193/95 is filed for release of the lorry bearing No. A.P. 16 U 2297, which was seized by the second respondent as it was found to be carrying "11" bottles of whisky, Crl.M.P. No. 3249/95 is filled for release of the Ambassador car bearing No. TMT 7962, which was seized by the first respondent as it was found to be carrying "70" litres of arrack in plastic containers.

2. These two petitions were heard by a learned single Judge, P. Ramakrishnam Raju, J. The learned counsel for the petitioners relying on the order dated 27-5-1995 in Crl.M.P. No. 2529 of 1995 made by Ramesh Madhav Bapat, J., contended before the learned single Judge that the Magistrate has got jurisdiction to order release of the vehicles in favour of the petitioners by way of interim custody. On the other hand, the learned Public Prosecutor placing reliance on a decision of the Supreme Court in Divisional Forest Officer and Another Vs. G.V. Sudhakar Rao and Others, contended that the provision u/s 452 of the Code of Criminal Procedure is general in nature and it has to yield to any special provision made in a statute with regard to forfeiture and confiscation of any property. He also contended that the bar imposed u/s 46E of the A.P. Excise

Act, 1968 on the jurisdiction of the Magistrate with regard to disposal of case property, including vehicles, when the matter is seized by the Deputy Commissioner of Excise or the Appellate authority, is reserved even after the enactment of the A.P. Prohibition Act, 1995. The learned single Judge having differed with the view taken in Crl.M.P. No. 2529 of 1995, referred the matter to a Division Bench.

3. The learned counsel for the petitioners contended that crimes were registered against the petitioners under the A.P. Prohibition Act, 1995 and also under the A.P. Excise Act, 1968, that u/s 451 of Cr.P.C., the Magistrate has got jurisdiction to order release of the vehicles in favour of the petitioners by way of interim custody and that when the crime is registered under both the Acts, the bar imposed u/s 46E of the A.P. Excise Act will have no operation as the A.P. Prohibition Act has the overriding effect over other Acts. He relied in this behalf upon the order in Crl.M.P. No. 2529 of 1995 made by Ramesh Madhav Bapat, J. and stated that the decision of the Supreme Court in Divisional Forest Officer and Another Vs. G.V. Sudhakar Rao and Others, is not applicable to the facts of the present case. On the other hand, the learned Public Prosecutor has contended that the Magistrate has got no jurisdiction to pass orders for release of the vehicles in favour of the petitioners.

4. In view of the above contentions, the important question of law that arises for consideration is, Whether the Magistrate has got power u/s 451 of the Code of Criminal Procedure to release the vehicles, which were involved in offences under the A.P. Prohibition Act and the A.P. Excise Act, pending disposal of the case.

5. It is necessary to look into the Statement of Objects and Reasons behind enacting the Andhra Pradesh Prohibition Act, 1995. They are as under :

"Article 47 of the Constitution enjoins that the State shall endeavour to bring about prohibition of the consumption, except for medicinal purposes, of all intoxicating drinks which are injurious to health. The Andhra Pradesh (Andhra Area) Prohibition Act, 1937 which satisfied the above Constitutional mandate was in force in the Andhra Area of the State of Andhra Pradesh until the 30th October, 1969. Prohibition was lifted in the Andhra Area of the State also with effect from the 1st November, 1969 and from that date onwards there has been no prohibition on the sale and consumption of alcoholic drinks in the State of Andhra Pradesh.

In recent times, it is noticed that the consumption of alcoholic drinks has grown alarmingly and has developed into a social evil. Though the sale of arrack was banned by the Government with effect from the 1st October, 1993, there is no ban on the sale and consumption of Indian made liquors and Foreign liquors, beer, wine, etc. The woman folk in the State of Andhra Pradesh have been agitating for the imposition of total prohibition. The Government have taken notice of their just demand and have decided to impose total prohibition on the consumption of alcoholic drinks, other than toddy."

Prohibition on the consumption of alcoholic drinks, other than toddy, was imposed in the State of Andhra Pradesh by the Government as consumption of alcoholic drinks has developed into a social evil and also in view of the agitation by the women folk for imposition of total prohibition.

6. The Andhra Pradesh Prohibition Act, 1995 came into force with effect from 20-2-1995. Section 7 of the Act prohibits selling, buying, being in possession and consumption of liquor, otherwise than in accordance with the provisions of the Act. Section 8 prescribes punishment for the above acts. Section 11 prescribes punishment for offences not otherwise provided for. Section 12, which is relevant, provides for the things liable to confiscation and it reads :

"Without prejudice to the powers of the Excise Officers u/s 46 of the Andhra Pradesh Excise Act, 1968, in any case in which an offence has been committed against this Act, the liquor by means of which the offence has been committed shall be liable to confiscation along with the receptacles, packages, coverings, animals, vessels, carts or other vehicles used to hold or carry the same."

Section 13(1) of the Act deals with ordering of confiscation and it is as under :

"When the offender is convicted or when the person charged with an offence against this Act is acquitted, but the Court decides that anything is liable to confiscation, such confiscation may be ordered by the Court."

Section 14 of the Act, which is also relevant for the purpose of the question involved, reads :

"All Officers in charge of police stations shall take charge of and keep in safe custody pending the orders of a Magistrate or of a Prohibition Officer, all articles seized under this Act which may be delivered to them; and shall allow any Prohibition Officer who may accompany such articles to the police station, or who may be deputed for the purpose by his superior officer, to affix his seal to such articles and to take samples from them. All samples so taken shall also be sealed with the seal of the officer in charge of the police station."

Section 25 of the Act provides that notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under this Act shall be cognizable and the provisions of the said Code with respect to cognizable offences shall apply to them.

7. Thus, from the above provisions, it is clear the Officers empowered under the Prohibition Act can seize any vehicle transporting prohibited liquors, that the things seized, which are liable to be confiscated as per Section 12, can be confiscated u/s 13 and that all Officers in charge of police stations shall take charge of and keep in safe custody and seal all the articles seized under the Act, pending orders of a Magistrate or of a Prohibition Officer. That means, the seized articles are subject to the orders of the Magistrate or Prohibition Officer. According to Section 13(1) of the A.P. Prohibition Act irrespective of the fact whether the offender is acquitted or convicted, the Court can order confiscation

of the seized articles. There is, thus, no bar for ordering disposal of the seized goods by the Court but only to confiscation. Section 23 of the Act provides that the provisions of Criminal Procedure Code, 1973 as regards arrest, detention, search, summons, warrants, production of persons arrested and disposal of things seized, shall apply to all actions taken under this Act. The proviso to Section 34(1) of the A.P. Prohibition Act makes it clear that from the date of commencement of the A.P. Prohibition Act, the provisions of the A.P. Excise Act, in so far as they are inconsistent with the provisions of the A.P. Prohibition Act, cease to operate.

8. In the year 1968, the Andhra Pradesh Excise Act was enacted to consolidate and amend the law relating to (i) the production, manufacture, possession, transport, purchase and sale of intoxicating liquor and drugs, (ii) the levy of duties of excise and countervailing duties on alcoholic liquors for human consumption and opium, Indian hemp and other narcotic drugs and narcotics, and to provide for matters connected therewith in the State of Andhra Pradesh. The Andhra Pradesh Excise Act is more of a fiscal than punitive nature. Though there are punitive sections in the said Act, they are mainly for breach or evasion of Excise duty.

9. Chapter VII of the A.P. Excise Act deals with penalties and offences. According to Section 45 of the A.P. Excise Act, whenever an offence punishable under the Act is committed, all intoxicant materials, utensils, implements or apparatus in respect of or by means of which such offence has been committed, and any receptacle, package, or covering in which anything liable to confiscation is found, and the other contents, if any, of such receptacle, package or covering and any animal, vehicle, vessel, raft or other conveyance used for carrying the same, shall be liable to confiscation. u/s 46 of the A.P. Excise Act, the Deputy Commissioner of Excise, before whom anything liable for confiscation is produced after seizure of the property, may order confiscation of such property whether or not a prosecution is instituted in that behalf. The Deputy Commissioner will have the powers of a Civil Court under the Civil Procedure Code, 1908 while making enquiries under the above section, such as receiving evidence on affidavits, summoning of witnesses, etc. Before passing the orders of confiscation u/s 46, a notice informing the grounds for confiscation and an opportunity to make representation shall have to be given to the person from whom the property is seized. Section 46E of the A.P. Excise Act, reads :

"Notwithstanding anything contained in the Code of Criminal Procedure, 1973 when the Deputy Commissioner of Excise or the appellate authority is seized with the matter under this Act, no Court shall entertain any application in respect of excisable articles, any package covering, receptacle, any animal, vehicle or other conveyance used in carrying such articles as far as its release, confiscation is concerned and the jurisdiction of the Deputy Commissioner of Excise or the appellate authority with regard to the disposal of the same shall be exclusive."

10. Thus, it is evident from the above provisions of the A.P. Excise Act that where the articles are seized under that Act, it is for the Deputy Commissioner of Excise to order confiscation of such articles, irrespective of the fact whether criminal prosecution has been launched or not. Section 46E of the A.P. Excise Act further bars the jurisdiction of the Court u/s 451 of Cr.P.C., regarding release or confiscation of the booty involved in the offence. Therefore, as per the scheme of the A.P. Excise Act, the Court has no role to play in a proceeding u/s 451 of Cr.P.C.

11. In juxtaposition under the Andhra Pradesh Prohibition Act, there is no provision specifically barring jurisdiction of the Court u/s 451 of Cr.P.C., for release of the booty along with any package covering, receptacle, any animal, vehicle or other conveyance used in carrying such articles. However, Section 12 speaks positively of confiscation of such booty along with package, etc., subject of course without prejudice to the powers of Excise officials u/s 46 of the A.P. Excise Act. Further Section 14 of the Act empowers the Officers in charge of the police stations to keep in safe custody the seized articles until an order is passed by the Magistrate or Prohibition Officer as contemplated u/s 12 or 13 of the Act. Further more, as per Section 23 of the A.P. Prohibition Act, the provisions of the Code of Criminal Procedure, 1973 relating to disposal of things seized shall apply to the action taken in this respect under that Act. These aspects impliedly keep intact the powers of the Magistrate u/s 451 of Cr.P.C., for release of the seized articles, whereas there is a specific bar exercise of such power under the A.P. Excise Act. u/s 34(1) of the A.P. Prohibition Act, only such of the Provisions in the A.P. Excise Act that are inconsistent with the Prohibition Act shall cease to operate.

12. It is the basic principle of interpretation of statutes that all the provisions of the enactment must be read together to get at the intention of the Legislature. Therefore, a reading of Sections 13, 14, 23 and 34(1) of the A.P. Prohibition Act, makes it manifestly clear that there is no bar against exercise of jurisdiction by the Magistrate u/s 451 of Cr.P.C., for release of vehicles involved in the prohibition offences. As a measure of corollary to Section 23 of the A.P. Prohibition Act, it has to be noticed that Section 4(2) of the Code of Criminal Procedure says that all offences under any other law shall be investigated inquired into, tried and otherwise dealt with according to be the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigation, inquiring into trying or otherwise dealing with such offences.

13. Thus, by reading the above provisions together, it is evident that the procedure laid down under the Code of Criminal Procedure applies for investigation and trial of offences under Acts other than Indian Penal Code unless the other Acts speak contra or provide a special provision otherwise. It is, thus, manifest that the provisions of Section 451, Cr.P.C., are applicable to the proceedings under the A.P. Prohibition Act, while it is not so far as the A.P. Excise

Act is concerned.

14. The contention of the Public Prosecutor that the bar imposed u/s 46E of the A.P. Excise Act is preserved even after the enactment of A.P. Prohibition Act is not sustainable because as per Section 13 of the A.P. Prohibition Act, the powers are conferred on the Magistrate to order confiscation of things involved in the offences under the said Act. The bar imposed u/s 46E of the A.P. Excise Act cannot be made applicable or extended to the matters under the A.P. Prohibition Act. Further, penal provisions of a statute, which take away the rights of parties available under ordinary law, have to be construed strictly. The Supreme Court in *Glaxo Laboratories (I) Ltd. Vs. Presiding Officer, Labour Court, Meerut and Others*, :

"A statute is regarded as penal for the purpose of construction if it imposes fine, penalty or forfeiture other than penalty in the nature of liquidation of damages or other penalties which are in the nature of civil remedies."

It is further held (at p. 511 of AIR) :

"It cannot be seriously questioned that Standing Order 22 is a penal statute in the sense that it provides that on proof of misconduct penalty can be imposed. It cannot be disputed that it is a penal statute. It must, therefore receive strict construction, because for a penalty to be enforced, it must be quite clear that the case is within both the letter and the spirit of the statute. If the expression "committed within the premises of the establishment or in the vicinity thereof" is given a wide construction so as to make the clause itself meaningless and redundant, the penal statute would become so vague and would be far beyond the requirement of the situation as to make it is a weapon of torture."

In the A.P. Prohibition Act, there is no provision barring jurisdiction of the Magistrate u/s 451 of Code of Criminal Procedure unlike the A.P. Excise Act. Further, Sections 12 to 14 show that power to confiscate is conferred on the Magistrate. Borrowal of the barring provision viz., Section 46E of the A.P. Excise Act, to the A.P. Prohibition Act, goes squarely against besides the basic principle of interpretation of the statute besides running contra to the ruling that penal statute should receive strict construction.

15. It is to be noted that when there is no provision in the Act, particularly in the penal statute, borrowal of penal provision from other Acts, will be against principles of interpretation. The Supreme Court in *Motibhai F.P. & Co. v. Collector, Central Excise* Air 1970 SC 829 laid down that while dealing with a penal provision, it would not be proper for the Courts to extend the scope of that provision the scope of that provision by reading into it the words, which are not there, and thereby widen the scope of that provision.

16. The decision in *Divisional Forest Officer and Another Vs. G.V. Sudhakar Rao and Others*, , which was relied upon by the Public Prosecutor, is of no avail to the respondent. In that case, the respondents sought for stay of proceedings before

the Authorised Officer u/s 44(2A) of the A.P. Forest Act pending disposal of criminal case before the Metropolitan Magistrate. A learned single Judge of this Court exercising powers u/s 482 of Cr.P.C., granted stay of the proceedings before the Authorised Officer. Then the State preferred appeal. In the circumstances of that case, the Supreme Court held that the High Court u/s 482 of Cr.P.C., cannot stay the proceedings for confiscation pending before the Authorised Officer u/s 44(2A) of the A.P. Forest Act till the disposal of the criminal case against the accused by the Metropolitan Magistrate.

17. The provisions of the A.P. Prohibition Act go to show that the Magistrate is competent to pass an order for confiscation of things u/s 452, Cr.P.C., read with Section 14 of the A.P. Prohibition Act and pending confiscation he can pass order for release of things, other than booty, by exercising the power u/s 451 of Cr.P.C. In cases, where the crime is registered exclusively under the A.P. Excise Act, the Deputy Commissioner of Excise alone is competent to pass orders of confiscation in respect of seized articles and booty and the Court will have no jurisdiction to exercise its power u/s 451, Cr.P.C., for release of even the seized vehicles in view of bar imposed u/s 46E of the A.P. Excise Act. However, where the crime is registered both under the A.P. Excise Act and A.P. Prohibition Act, if a petition is filed for release of the vehicle under the provisions of Section 451, Cr.P.C., the concerned Court has to first decide whether the offences committed is punishable under the A.P. Excise Act or A.P. Prohibition Act. In case, the Court comes to the conclusion that the offence committed is punishable u/s 451 of Cr.P.C., to order release of the vehicle. However, in case the Court comes to conclusion that the offence committed is punishable under the A.P. Prohibition Act, then the Court has got power u/s 451, Cr.P.C. to order release of the vehicle involved in the offence.

18. Accordingly, we hold as under :

(1) Where the crime is registered under the provisions of the Andhra Pradesh Prohibition Act, the Magistrate has got power to consider the petition filed under the provisions of Criminal Procedure Code viz., Section 451, Cr.P.C., for release of the vehicle involved in the offence.

(2) Where the crime is registered only under the provisions of the Andhra Pradesh Excise Act, 1968, the Deputy Commissioner of Excise alone is competent to pass orders of confiscation in respect of seized articles or vehicles and the Court will have no jurisdiction to exercise u/s 451, Cr.P.C., to order release of the vehicle seized.

(3) Where the crime is registered both under the provisions of the Andhra Pradesh Excise Act, 1968 as well as the provisions of the Andhra Pradesh Prohibition Act, 1995, a petition filed under provisions of Cr.P.C., viz., Section 451, Cr.P.C., for release of vehicle seized and it is contended that the offence exclusively falls under the A.P. Excise Act, the concerned Court has to first decide whether the offence committed is punishable under the A.P. Excise Act or the A.P.

Prohibition Act. In case, the Court comes to the conclusion that the offence committed is punishable under the A.P. Excise Act then it cannot exercise power u/s 451, Cr.P.C. for order release of the vehicle. However, in case the Court comes to conclusion that the offence committed is punishable under the A.P. Prohibition Act, then the Court has got power u/s 451, Cr.P.C., to order release of the vehicle.

(4) Where the crime is registered under the provisions of the A.P. Excise Act, 1968 and the provisions of the A.P. Prohibition Act, 1995, and when there is no plea that the offence exclusively falls under the A.P. Excise Act, then the Court has got power u/s 451, Cr.P.C., to order release of the vehicle inasmuch as the A.P. Prohibition Act has got overriding effect over the A.P. Excise Act.

19. In these case, it is not the case of the prosecution that crimes were registered exclusively under the A.P. Excise Act. On the other hand, the case of the petitioners and the record show that crimes were registered under the A.P. Prohibition Act and the A.P. Excise Act. In view of our above discussion, we think it just and proper to direct the respondents to release the vehicles on the condition of petitioners furnishing bank guarantee for the value of the vehicles assessed by the concerned Road Transport Authority. The petitioners shall not alienate the vehicles and shall produce them whenever they are directed to do so. The Criminal Miscellaneous Petitions are disposed of accordingly.

20. Order accordingly.