

(2012) 02 KAR CK 0068

In the Karnataka High Court

Case No : Writ Petition No. 17991 of 2011 (EXCISE)

Sri Mr. Manjunath Gowda

APPELLANT

Vs

The Authorized Officer and Deputy Commissioner of Excise
Chickmagalur District Chickmagalur and The Inspector of
Police Balehonnur Police Station Chickmagalur Dist

RESPONDENT

Date of Decision : 28-02-2012

Acts Referred:

Karnataka Excise Act, 1965 — Section 32, 34, 40, 43
Penal Code, 1860 (IPC) — Section 171

Citation : (2012) ILR (Kar) 2627 : (2012) 6 KarLJ 375

Hon'ble Judges : Ajit J. Gunjal, J

Bench : Single Bench

Advocate : B.P. Leeladhar, for the Appellant; H. Venkatesh Dodderi, AGA., for the Respondent

Final Decision : Allowed

Judgement

Ajit J. Gunjal

1. Petitioner is before this court assailing the order passed by the learned Additional Sessions Judge at Chikmagalur in Criminal Appeal No. 94/2010 decided on 19.4.2011 confirming the order passed by the Authorized Officer and Deputy Commissioner of Excise confiscating the vehicle in question. Sans details, the facts can be stated as under:

On 18.12.2005 at around 10.30 pm, Ravikumar, CPI, N R Pura Circle lodged a complaint before the PSI at Balehonnur Police Station which was registered in Crime No. 125/2005 for the offence punishable u/s 34 of the Karnataka Excise Act, 1965 [for short "the Act"] read with section 171 of the Indian Penal Code. The gist of the complaint was that the complainant was on his beat duty in connection with Zilla Panchayat and Taluk Panchayat elections and he was coming from N R Pura towards Balehonnur side, on Madaguni C K road, a person had parked Maruti Omni Van bearing registration No. KA 18/M-4412. On

suspicion, the complainant checked the said vehicle and found that the person who was in the car and another were illegally distributing arrack packets and when questioned it was found that the two persons did not have permit for selling of arrack. On enquiry, he disclosed his name was M. Manjunatha and another person with him was Narayana, both of Mudugini Village. The CPI seized the vehicle as well as 33 packets of arrack containing 100 ml. Thereafter, both accused were brought to the police station and handed over to the PSI along with contraband articles and the vehicle involved in the offence for taking further action. A case was registered as against the petitioner and one another and the contraband articles and vehicle were produced before the Authorized Officer and the Deputy Commissioner for Excise, Chikmagalur District, Chikmagalur. The Authorized Officer thereafter initiated confiscation proceedings. The petitioner appeared before the Authorized Officer and secured interim custody of the vehicle pending confiscation proceedings. In support of the prosecution, they have examined four witnesses and six documents were marked as Exhibits.P1 to P6 and the vehicle in question as MO No. 1. During the course of inquiry, the petitioner did not adduce any evidence either oral or documentary. The Authorized Officer was of the view that there was clear violation of the provisions of section 34 of the Act, hence confiscated the vehicle in question and recalled the order of granting interim custody. The correctness and legality of the same was questioned by the petitioner before the learned Sessions Judge. The learned Sessions Judge has concurred with the finding recorded by the Authorized Officer and has dismissed the appeal.

2. It is submitted by Mr. Leeladhar, learned counsel for the petitioner that the interim custody of the vehicle continues to be with the petitioner.

3. The learned counsel for the petitioner submits that out of 33 packets which were seized, only one packet of 100 ml. was sent to the chemical analyst and his opinion was sought to be produced before the Confiscating Officer. Insofar as the remaining 32 packets are concerned, they were not sent for chemical examination. He further submits that the petitioner was tried for the offences punishable under the Karnataka Excise Act, 1965 as well as Indian Penal Code and the criminal court has acquitted the petitioner albeit on extending the benefit of doubt.

4. The learned counsel for the State supports the orders passed by the Confiscating Authority as well as the Sessions Court. He submits that notwithstanding the fact that only one sachet was sent for chemical examination, the same discloses that there is violation of the provisions of the Act, hence confiscation is justified.

5. Apparently, the Authorized Officer as well as the learned Sessions Judge have ruled that the petitioner has violated the provisions of sections 40 and 43 of the Act.

6. The prosecution has examined four witnesses in support of his case. Ex.P1 is

the seizure mahazar and PW1 speaks about the said seizure. But however, he would state that he does not know what is written in Ex.P1 and he also does not know what was seized pursuant to Ex.P1. PW2-Venkatesh is another witness to the seizure mahazar-Ex. P1 and he has also not supported the case of the prosecution. Indeed, both have turned hostile. The Confiscating Authority has to fall back upon PWs 3 & 4 who are the official witnesses inasmuch as PW4 is the PSI who has registered the case and sent the First Information Report to the Court and seized the contraband, recorded the statement of witnesses, arrested the accused and handed over the seized materials to the Excise Department, N.R. Pura. PW3 is the police officer who has seized the vehicle in question, which was standing in suspicious circumstances. He speaks about the two persons in the said car and on verification, it was found that there were 33 liquor packets of 100 ml. each. On enquiry, the occupants of the car stated that they had no license or permit when the said sachets were seized. This is the evidence, which was produced, in the confiscating proceedings. Undoubtedly Section 40 of the Karnataka Excise Act raises a presumption as to the commission of offence in certain cases. Section 40 would read as under:

Presumption as to commission of offence in certain cases. - in prosecutions u/s 32 and Section 34, it shall be presumed, until the contrary is proved, that the accused person has committed the offence punishable under that Section in respect of-

(a) any intoxicant or.

(b) any still, utensil, implement or apparatus whatsoever in the manufacture of any intoxicant other than toddy or.

(c) any materials which have undergone any process towards the manufacture of an intoxicant or from which an intoxicant has been manufactured.

7. Undoubtedly, any presumption is a rebuttal presumption. Indeed, if the petitioner is found in possession of the intoxicating substances for which they did not have any permit certainly a presumption can be raised that an offence has taken place. But however, when a person is sought to be prosecuted the prosecution is required to be proved beyond all reasonable doubt that there is a clear violation of the provisions of the Act.

8. In the case on hand the specific case of the prosecution is that the petitioner was carrying 33 sachets of 100 ml. each in the vehicle. It has also come in evidence that only one sachet of 100 ml. was sent to the chemical analyst. Surprisingly enough, the chemical analyst's report is not forthcoming and was not marked in the confiscating proceedings. It might have been marked as Ex. P5 in the criminal proceedings. But however, that is not forthcoming in the confiscating proceedings.

9. Granting that all the 33 sachets were recovered from the possession of the petitioner at the time and place alleged by the prosecution but there is no legal

evidence to show that each of the sachets contained arrack as alleged. It is not disputed that one sachet was sent to the analyst for analysis and it is not known as to why the remaining 32 sachets were not sent to him. Merely because the remaining 32 sachets were found along with one sachet, which was sent to the chemical examiner, it is difficult to come to a conclusion that the remaining 32 sachets also contained arrack or other intoxicating substances. I am of the view that the Confiscating Officer as well as the learned Appellate Judge were clearly in error in holding that the petitioner has committed an offence punishable u/s 34 of the Act. Apparently, from the evidence of PWs 3 and 4 It becomes clear that the only substance, which was subjected to analysis was the substance in one sachet, which was sent. Indeed, it is also not the case of the prosecution that the remaining 32 sachets were also sent to the chemical examiner. But however, they did not choose to examine him. It is the specific case of the prosecution that only one sachet was sent. It is therefore obvious that the prosecution has failed to establish that the remaining 32 sachets contained arrack or some other kind of intoxicants. Having said so, I am of the view that the order passed by the Confiscating Authority as well as the learned Appellate Judge warrants interference. Hence, the following order is passed:

(i) Petition is allowed.

(ii) The order passed by the Confiscating Authority as well as the learned Appellate Judge are quashed.

(iii) The conditions imposed by the authorized Confiscating Authority while releasing the vehicle during the interim custody stands dissolved.

(iv) Rule is issued and made absolute.

Mr. H. Venkatesh Doddheri, learned Additional Government Advocate appearing for respondents is permitted to file memo of appearance within four weeks.