

(2002) 10 KAR CK 0035

In the Karnataka High Court

Case No : Criminal Revision Petition No. 338 of 2000

The Inspector of Excise, Bangalore Rural District and Another	APPELLANT
Vs	
D. Venkataramana Swamy	RESPONDENT

Date of Decision : 01-10-2002

Acts Referred:

Karnataka Excise Act, 1965 — Section 43 B (2)

Citation : (2003) 2 KarLJ 478 : (2003) 1 KCCR 189

Hon'ble Judges : K. Sreedhar Rao, J

Bench : Single Bench

Advocate : M. Marigowda, Additional State Public Prosecutor, for the Appellant;
Ashok N. Nayak, for the Respondent

Judgement

K. Sreedhar Rao, J.—This revision is filed against the order dated 17-9-1999 in Cri. Misc. A. No. 12 of 1996 passed by the I Additional District and Sessions Judge, Bangalore Rural District, Bangalore.

2. The petitioners are the State Authorities. The respondent is the owner of the Ambassador Car bearing Registration No. MES 6602. The vehicle was caught while illegally transporting the contraband non-duty paid liquor. The confiscation proceedings came to be initiated. The authorised officer issued notice to the owner of the vehicle and after giving opportunity passed the orders of confiscation holding that the vehicle has been put in use for illegal transportation of the contraband illicit liquor. In appeal, the Sessions Judge reversed the order of confiscation and directed of release the vehicle in favour of the respondent. Being aggrieved, the present revision is filed by the State.

3. The learned Counsel for the respondent in support of the order of the Sessions Judge contended that there is a categorical finding that the respondent has no knowledge of commission of an offence and there is no connivance in committing the offence. The driver of the vehicle was directed to take a marriage party and in violation of the lawful duties entrusted to him, he has carried the contraband liquor in the vehicle in question. Thus, submits that the vehicle is not liable for

confiscation under Sub-section (2) of Section 43-B of the Karnataka Excise Act. For convenient reference, Sub-section (2) of Section 43-B is extracted hereunder.--

"(2) Without prejudice to the provisions of Sub-section (1), no order confiscating any animal, cart, vessel or other conveyance shall be made u/s 43-A, if the owner of the animal, cart, vessel or other conveyance proves to the satisfaction of the authorised officer that it was used in carrying the liquor or intoxicant or the material, still, utensil, implements or apparatus or the receptacle, package or covering without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the animal, cart, vessel or other conveyance and that each of them had taken all reasonable and necessary precautions against such use".

4. A meticulous reading of the provision indicates two conditions, if fulfilled, the vehicle would not be liable for confiscation. The burden is on the owner of the vehicle to prove the said conditions. Firstly, it should be shown that the owner has no connivance and knowledge of the commission of the offence of illegal transportation of contraband liquor. Secondly, the person to whom the vehicle is entrusted by the owner and who is in charge of the vehicle should also exercise a similar measure of diligence and efforts to see that no illegal transportation of the contraband liquor takes place in the vehicle. Despite such diligent steps taken by the person in charge of the vehicle, if illegal transportation takes place the vehicle would not be liable for confiscation. A close reading of the said conditions would imply that the person in charge of the vehicle if he were to misuse the vehicle for illegal transportation directly by himself or allowing others consciously, the owner becomes vicariously liable for the acts and he has to suffer the grave consequences of confiscation. In the present case, it is the contention of the respondent-owner, that the driver has misused the vehicle against his instructions. The said excuse is not a ground to exonerate the owner from the consequences of confiscation under Sub-section (2) of Section 43-A.

5. In that view, I find that there is no triable defence set up by the respondent in the proceedings before the Courts below. In view of the reasons and discussions made above, the order passed by the Sessions Judge is bad in law. Accordingly, the order is set aside. The order of confiscation is confirmed.