(2004) 02 AP CK 0040

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 644 of 2004

Ulli Bhaskar APPELLANT

Vs

The State of A.P. RESPONDENT

Date of Decision : 23-02-2004

Acts Referred:

Andhra Pradesh Excise Act, 1968 — Section 34
Andhra Pradesh Prohibition Act, 1995 — Section 8

Citation : (2004) 1 ALD(Cri) 561 : (2004) 2 ALT(Cri) 30 : (2004) 2 APLJ 17 : (2004) CriLJ 2617

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : Prabhakar Rao, for the Appellant; The Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

C.Y. Somayajulu, J.—Alleging that Surarapu Neelamma (A-1) was found in possession of illicitly distilled liquor in her house and that the said Neelamma (A-1) confessed that she prepared the illicit liquor after purchasing jaggery and Alum from the petitioner (A.2) and so they went to the shop of petitioner and interrogated him and since the petitioner admitted that he sold black jaggery and Alum to Neelamma (A-1), Sub Inspector of Police, Noothankal registered a case in Cr.No.55 of 2002 against Neelamma (A-1) and petitioner, arrested them, seized 100 Kg of black jaggery and 30 Kg of Alum from the possession of petitioner before panchas, sent the property for chemical analysis and on receipt of the report transferred the C.D. file to the Inspector, Prohibition and Excise Station, Thungathurthy, who re-registered the case in Cr.No.203/02-03 and after investigation filed a charge sheet against A.1 and the petitioner for offences under Sections 8 (b) of A.P. Prohibition Act, 1995 and u/s 34 (e) of A.P. Excise Act. This petition is filed to quash the proceedings against the petitioner.

2. The contention of the learned counsel for petitioner is that since possession of

black jaggery and/or alum is not an offence either under the provisions of Prohibition Act or Excise Act, and since there is nothing on record, except the confession allegedly made by the petitioner to show that he sold black jaggery and alum to A.1, and since the confessional statement made by the petitioner is not admissible in evidence, charge sheet against the petitioner is liable to be quashed. Heard the learned Additional Public Prosecutor.

3. As rightly contented by the learned counsel for petitioner, possession of either black jaggery and/or Alum, per se, is not an offence under the Prohibition Act or the Excise Act, because neither of them, as such, are intoxicants, as defined by the Excise Act. As per Section 34 (e) of the Excise Act, using, keeping or being in possession of any materials, stills, utensils, implements or apparatus whatsoever, for the purpose of manufacturing any intoxicant other than toddy is an offence. So, it is clear that possession must be "for the purpose of manufacturing of an intoxicant". It is well known that there are four stages in the commission of an offence, i.e., (i) forming an intention to commit the offence, (ii) making preparations therefor, (iii) making an attempt to commit the offence and (iv) actually committing the offence. Since section 34 (e) of the Excise Act speaks about the person being in possession "for the purpose of manufacturing an intoxicant", it is clear that the offence is committed only when ''manufacturing'' is going on, and not before the manufacture, because even to constitute an attempt, the act must reveal, with reasonable certainty, in conjunction with other facts and circumstances, and not necessarily in isolation, an intention, as distinguished from mere desire or object, to commit a particular offence (see State of Maharashtra Vs. Mohd. Yakub and Others, . It is also relevant to mention that in Malkiat Singh Vs. The State of Punjab, the Supreme Court held that the test for determining whether an act of a person constitutes an attempt or preparation is to see whether the overt acts, already done, are such that if the person changes his mind and does not proceed further the acts already done are harmless or not. Therefore, being in possession of black jaggery and alum, even with an intention to manufacture illicit liquor, can, by no stretch of imagination, be said to be an offence, because as per the Excise Act an offence u/s 34(e) is committed by a person when he is using the material "for purpose of manufacturing" an intoxicant. So, overt act of making preparation for manufacture of an intoxicant (i.e. arrack) with the material is the sine quo non for the act to constitute an offence u/s 34 (e) of the Excise Act. In view thereof sale of black jaggery and alum either together or separately, with or without knowledge that the person to whom they are being sold, is likely to use them for the purpose of manufacturing illicit arrack, is not an offence u/s 34 (e) of the Excise Act, because neither black jaggery nor alum, when sold jointly or separately, are intoxicants as defined in the Excise Act. The purpose for which he is purchasing the goods from a vendor need not be disclosed by the purchaser to the vendor, and even if the purchaser discloses that he has an intention to manufacture arrack from the goods purchased by him, the vendor cannot be said to have committed an offence u/s 34(e) of Excise Act, because as stated above,

neither alum nor black jaggery are intoxicants either by separately or when they are mixed. They at best are raw materials from which arrack can be prepared. When sale of black jaggery and/or alum, for whatever purpose is not made an offence by the Excise Act or Prohibition Act, the vendor of black jaggery and/or alum would not be committing an offence u/s 34(e) of Excise Act, when he sells them to a person even with a specific knowledge that the vendee is likely to manufacture illicit arrack by making use of those articles.

4. Therefore, even assuming that confession allegedly made by the petitioner, that he sold black jaggery and alum to A.1 for preparation of arrack is true, he cannot be said to have committed an offence u/s 34(e) of Excise Act.

5. As stated earlier, except the alleged confession made by the petitioner, which is not admissible in evidence, there is nothing on record to show that the petitioner sold the black jaggery and alum to A.1 for preparation of illicit liquor seized by the police from her. Therefore, even assuming that all the allegations made against the petitioner in the charge sheet are true and correct, no offence under the provisions of Excise Act or Prohibition Act can be said to have been committed by the petitioner.

6. In State of Karnataka Vs. M. Devendrappa and Another, it is held that if the allegations in the charge sheet, if taken to be true, do not disclose commission of any offence, the charge sheet can be quashed. In this case, since the allegations made in the charge sheet against the petitioner, if taken to be true, do not disclose commission of an offence either under the provisions of the Excise Act or the Prohibition Act the charge sheet against the petitioner is liable to be, and hence is, quashed.

7. The criminal petition is accordingly allowed. The black jaggery and Alum seized from the possession of petitioner shall be returned to him.

