

(2001) 11 AP CK 0016

In the Andhra Pradesh High Court

Case No : Criminal Revision Case No. 558 of 1999

Yeduru Sreenivasulu Reddy

APPELLANT

Vs

The State of Andhra Pradesh

RESPONDENT

Date of Decision : 27-11-2001

Acts Referred:

Andhra Pradesh Excise Act, 1968 — Section 34, 34A, 35, 36, 37
Criminal Procedure Code, 1973 (CrPC) — Section 100(4)
Mysore Excise Act, 1901 — Section 53, 54

Citation : (2002) 1 ALD(Cri) 347

Hon'ble Judges : E. Dharma Rao, J

Bench : Single Bench

Advocate : G. Sreenivasulu Reddy, for the Appellant; Public Prosecutor, for the Respondent

Judgement

Incomplete Text E. Dharma Rao, J.—The petitioner herein was prosecuted for the offence u/s 34(a) of the A.P. Excise Act, 1968 (for brevity the Act) in CC No. 442 of 1996 before the learned Special Judicial Magistrate of I Class for Prohibition and Excise Offences, Cuddapah, on the allegation that on 19.9.1993 at about 10.00 p.m. on suspicion, the Excise Inspector, Proddatur, alongwith his staff and Sub-Inspector of Police, Proddatur II Town intercepted the jeep of the petitioner bearing No. TCK 1728 coming from Jinnah Road towards Mydukur and on verification found 18 card board boxes containing different varieties of liquor, which was non-duty paid and the petitioner failed to produce either permit or licence for transporting the contraband. Therefore, they arrested the petitioner, seized the property under cover Special Report, drawn samples from each variety and send it to the Chemical Examiner. The Analysis Report revealed that the samples are beer and Indian Liquor. Therefore, the petitioner was charge sheeted for transporting non-duty paid liquor.

2. To substantiate the charge, the prosecution examined P. Ws. 1 to 3 and marked Exs. P-1 to P-6 and MOs 1 to 6. The Trial Court has considered the fact that on interception by the police officers, the petitioner was found in possession

of contraband, that the incident took place in a busy road surrounded by cinema theatre and other business establishment and that no body came forward to act as panch witness - mediators and that the residence of the V.A.O. is situated one kilometer away from that place and therefore, Special Report was drafted and having regard to the analysis report, found the petitioner guilty for the offence u/s 34(a) of the Act, convicted and sentenced him as stated supra.

3. Aggrieved of the said conviction and sentence, the petitioner herein preferred Criminal Appeal No. 40 of 1997 before the learned Sessions Judge, Cuddapah, who by his judgment dated 17.3.1999, which is impugned in this Revision, dismissed the appeal confirming in toto the conviction and sentence awarded by the trial Court.

4. Aggrieved by the said conviction and sentence, the present Criminal Revision Case is filed.

5. The learned counsel for the petitioner, Sri M. Sriramulu Reddy, contended that the vehicle of the accused was stopped and in conducting search and seizure of the contraband, the officials have not followed the provisions of Section 55 of the Act, which is mandatory. It is further contended that the owner of the jeep was not informed, that according to the evidence of P.W.-1 when nobody came forward to act as panch witness, the officials should have resorted to the provisions of Sec. 100(4) of the Code of Criminal Procedure (for brevity the Code). Therefore, for the above lapses, he contended that the conviction and sentence passed by the trial Court and confirmed by the appellate Court are liable to be set aside.

6. For better appreciation of the contentions, it is relevant to extract Section 55 of the A.P. Excise Act, 1968, which reads as under:

"...Power to search without warrant: Whenever the Commissioner or a Collector or any Police Officer not below the rank of an Officer-in-charge of a Police Station or any Excise Officer not below the rank of an Excise Sub-Inspector, has reason to believe that an offence u/s 34, 35, Section 36, 37 or 37-A, has been, is being or likely to be, committed, and that a search warrant cannot be obtained without affording the offender an opportunity of escape or of concealing evidence of the offence, he may, after recording the grounds of his belief:-

a) at any time by day or by night enter and search any place and seize anything found therein which he has reason to believe to be liable to confiscation under this Act; and

b) detain and search and if he thinks proper, arrest any person found in such place whom he has reason to believe to be guilty of such offence as aforesaid..."

7. As per the testimony of P.Ws. 1 to 3, on suspicion they intercepted the jeep of the accused, conducted search and seizure without recording the grounds before such search and seizure for their belief that an offence under sections 34, 35, Section 36, 37 or 37-A, has been, is being or likely to be committed by the

petitioner - accused and that the search warrant cannot be obtained without affording the offender an opportunity of escape or concealing the evidence of the offence.

8. The Supreme Court, in similar circumstances, in K.L. Subhayya Vs. State of Karnataka (1) while dealing with the a case that arose under Sec. 54 of the Mysore Excise Act where the Inspector who searched the car of the appellant had not made any record of any grounds on the basis of which he had a reasonable belief that an offence under the Act was being committed before proceeding to search the car and thus the provisions of Sec. 54 of the Act were not at all complied with.

9. Section 54 of the Mysore Excise Act is analogous to Section 34 of the A.P. Excise Act. The Supreme Court in the above decision has held that the non-recording the grounds on the basis of which he had a reasonable belief that an offence under the Act was being committed before proceeding to search the car renders the entire search without jurisdiction and as a logical corollary vitiates the conviction. It is further observed that both Sections 53 and 54 of Mysore Excise Act contain valuable safeguards for the liberty of the citizen in order to protect them from ill-founded or frivolous prosecution or harassment. It was further observed that the point was taken before the High Court, who observed that the provisions of Sec. 53 and 54 are wholly irrelevant and appears to have brushed aside the legal lacuna without making any real attempt to analyse the effect of the provision of Section 53 and 54 and held that such a cryptic approach to a legal question which is of far reaching consequences cannot be approved. Thus the Supreme Court approved the ground which was rejected by the High Court and held that there was a direct non-compliance of the provisions of Sec.54 which renders the search completely without jurisdiction and thus conviction and sentence were set aside and the appeal was allowed.

10. Having regard to these facts and circumstances, it is evident that these provisions of law were not canvassed before the trial Court. But, as contended by the learned counsel for the petitioner - accused, these are borne out by the provisions contemplated u/s 55 of the Act, under guidance of which the Excise officials are supposed to conduct search and seizure. Therefore, there is no hesitation in holding that the officials have given a total go bye to these mandatory provisions and, therefore, the ratio laid down in Subhayya's case squarely applies to the facts and circumstances of this case.

11. The next contention raised by the learned counsel for the petitioner is that when the vehicle of the petitioner was intercepted on suspicion in the busy road surrounded by cinema theatre and other commercial establishments and none have come forward to act as panch witness, they should have resorted to Section 100(4) of the Code and passed a written order. It is expedient to have a glance of Section 100(4) of the Code for better appreciation of the facts involved in this case.

"...PERSONS IN CHARGE OF CLOSED PLACE TO ALLOW SEARCH:

(1).....

(2).....

(3).....

(4) before making a search under this Chapter, the officer or other person about to make it shall call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situate or any other locality if no such inhabitant of the said locality is available or is willing to be a witness to the search, to attend and witness the search and may issue an order in writing to them or any of them so to do..."

12. Therefore, as stated by P.Ws. 1 to 3, when the residence of Village Administrative Officer was one kilometer from that place and when no one was willing to act as panch witness, they should have, for the purpose of conducting the search and seizure, passed a written order, so to do.

13. Therefore, in the absence of any such order, the evidence of P.Ws. 1 to 3 that no one came forward to witness the panchanama, cannot be believed and relied upon. Therefore, the entire search conducted by the prosecution is vitiated, being without jurisdiction and as a necessary corollary, the conviction also vitiates.

14. Section 55 of the Act contains valuable safeguards for the liberty of citizen in order to protect them from ill-founded or frivolous prosecution or harassment. Ofcourse, the petitioner did not raise such pleas before the Courts below, but it is for the prosecution to bring on record while charging the accused, that they have followed the procedure contemplated u/s 55 of the Act and 100(4) of the Code. For these reasons, I am satisfied that prosecution has failed to prove that P.Ws. 1 to 3 have followed such a procedure. Consequently, for these lacunae, the search and seizure is vitiated and the conviction is wholly unsustainable. Accordingly, the Criminal Revision Petition is allowed and the conviction and sentence are set aside.

15. Before parting with the judgment, I am of the considered view that it is high time to impression upon the Excise Officials and other Police Officials to adhere to the sacrosanct provisions of Sec. 55 of the Act and Sec. 100(4) of the Code whenever, on suspicion, they intercept a vehicle and conduct search and seizure; inasmuch as such searches involve fundamental rights of the citizens.