
(1974) 09 AP CK 0008
In the Andhra Pradesh High Court

Yerra Kanakarao

APPELLANT

Vs

The State of Andhra Pradesh

RESPONDENT

Date of Decision : 17-09-1974

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 190, 251, 252, 253, 254

Citation : (1975) CriLJ 953

Hon'ble Judges : Lakshmaiah, J;Chinnapa Reddy, J

Bench : Division Bench

Judgement

Chinnappa Reddy, J.—These three cases have been placed before us for our opinion by an order of our learned brother Chennakesav Reddy, J. One of the questions raised in these three cases is whether the procedure prescribed by Section 251-A or Sees. 252 - 258, Criminal Procedure Code should be followed in cases instituted before a Magistrate by an Excise Officer.

2. In Cri. R. C. 122/72 A. D. V. Reddy, J., has taken the view that the report of an Excise Officer could not be considered to be the report of the police Officer and in such cases the procedure prescribed by Sections 252 - 258, Criminal Procedure Code alone should be followed. Our learned brother Chennakesav Reddy, J., did not agree with that view. Our learned brother has pointed out that Section 57 of the Excise Act was apparently not brought to the notice of A. D. V. Reddy, J. We are inclined to agree with Chennakesav Reddy, J. Section 251-A, Criminal Procedure Code provides for the procedure to be followed in a case instituted upon a police report. Section 190, Criminal Procedure Code enables the court to take cognizance of offence either on a police report or on a complaint or on the Magistrate's own knowledge or information. Section 57 of the Excise Act expressly enacts that for purposes of Section 190, Criminal Procedure Code the report of the Excise Officer should be deemed to be a police report. In the face of this provision, we do not see how the report of the Excise Officer can be treated as a complaint and not as a police report.

3. Sri Dixit the learned Counsel urged that u/s 61 (1) (b) of the Excise Act it is

provided that no Magistrate shall take cognizance of an offence punishable under the other sections of the Act except on his own knowledge or suspicion or on the complaint or report of an Excise or police officer. According to Sri Dixit this provision shows that in the case of an Excise Officer the document he submits to the court is called a complaint and while in the case of a Police Officer it is called a report. We cannot agree with the submission of Sri Dixit, If we agree with the submission of Sri Dixit, Section 57 of the Excise Act would become meaningless. We therefore agree with the view" expressed by our learned brother Chennakesav Reddy, J., in his order for reference. The case will go back to the learned Single Judge for Final Disposal.

(In pursuance of the above opinion of the Division Bench the cases were placed for final disposal before Chennakesav Reddy, J.)

CHENNAKESAV REDDY, J.: 4. In these two revision cases the facts are similar. The questions that are raised and argued are the same. For the purpose of proper appreciation, of the questions involved, the facts in Cr. R. C. 550 may be stated. The decision in this case shall govern the case, Cri. R. C. 332.

5. On 23-3-1973 at 1.40 a.m. an ambassador car, A.A.A. 1329 was seen coming from Hyderabad side. The Excise Officials, P. Ws. 1 and 2 who were waiting at the Chillakallu Check post for checking the vehicles stopped the car. A-3 was found at steering of the car and A-1 and A-2 were sitting in the back seat. There were two gunny bag bundles in the back seat. On checking they were found to contain 20 paper packets each containing pressed Ganja. When the dicky of the car was opened, they found 60 paper packets containing pressed Ganja. On weighment each paper packet was found to contain 2 Kgs. of pressed Ganja. Thus, a total of 200 Kgs. of pressed Ganja was seized under mediator's report. Ex. "P-I. It was attested by P.W. 3. a mediator. A charge-sheet was thereafter laid against the accused.

6. The defence of the accused was one of denial. They pleaded that they were coming by a car which did not contain any pressed Ganja or any other contraband. They stated that the Excise Officials stopped the car, accused and ill-treated them and foisted a false case against them.

7. The learned Magistrate accepted the prosecution case and convicted the accused u/s 34 (a) of the A. P. Excise Act and sentenced each one of them to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs. 100/- and in default to suffer rigorous imprisonment for one month each. The pressed Ganja was confiscated to the State. Accused 1 to 3 preferred an appeal to the Sessions Judge, Machilipatnam. The learned Sessions Judge upheld the convictions and sentences of the accused and dismissed the appeal. Hence this revision case.

8. The learned Counsel for the petitioners has raised the following contentions: (1) The trial Magistrate committed a grave irregularity in following the procedure laid down in Section 251(a), Criminal Procedure Code in the trial of this case

inasmuch as the proper procedure in the trial of cases instituted on the report of an Excise Officer should be the one prescribed from Section 252 onwards since the report of an Excise Officer is only a complaint. (2) Non-observation of the provisions of Section 55 of the A. P. Excise Act. by not recording the reasons for the search is a serious irregularity not curable u/s 537, Criminal Procedure Code and vitiates the trial. (3) There is no reliable evidence to establish that the contraband seized in this case is pressed Ganja inasmuch as sample of the same was not sent for any chemical analysis (4) Exclusive possession of the accused over the contraband seized is not established. (5) There is no notification issued by the State Government as contemplated by Section 14 of the A. P. Excise Act.

9. The first three contentions raised by the learned Counsel are no longer *res integra*. In so far as the procedure to be followed in trial of offences under "Section 34 (a) of the A. P. Excise Act. a "Division Bench of this Court held in Cri-R. C. No. 332 of 1973 that the report of the Excise Officer is a police report and the procedure prescribed in Section 251-A, "Criminal Procedure Code alone is applicable. Contentions 2 and 3 are covered by the decision in *Public Prosecutor v, L. Ramachandraiah* (19741 1 AP fLJ 112. In that decision Ramachandra IRaju, J., held that the failure to record reasons for the search u/s 55 of the A. P. Excise Act will not render the search illegal and the evidence relating to it inadmissible. It was also held that an Excise Sub-Inspector can be trusted with having some knowledge about liquors and therefore when he stated in his evidence that what was seized was liquor from its colour, odour, piercing smell and the strength which he tested, the report of the Chemical Examiner was unnecessary for coming to the conclusion that the contraband seized was liquor. In a more recent decision, the Supreme Court in *Sri Chand Batra Vs. State of U.P.*, held that an Excise Inspector is an expert within the meaning of the Section 45 of the Evidence Act because he would have tested lots of samples of liquor and illicit liquor and "the test conducted by him was sufficient to establish that what was in possession of the accused was illicit liquor. Therefore, the first three contentions must fail.

10. As regards the fourth contention that the accused have no knowledge, both the courts below have held that the possession of the accused of the contraband was conscious and intelligent possession. I do not find any grounds to disagree with the concurrent findings of both the courts below.

11. The last contention need not detain me long because it is not the case of the accused that they had any licence to possess any quantity of pressed Ganja, On the other hand their defence was one of total denial and the contraband pressed Ganja seized was a huge quantity of 200 Kgs. Further the government have also issued G.O. Ms. No. 1087 as long back as 12-11-1969 under which a person could not possess any Ganja without a licence.

12. In the result the revision petitions must fail and they are accordingly dismissed.