

(2002) 07 AP CK 0025

Andhra Pradesh High Court

Case No: Writ Petition No. 4954 of 2002 and W.P.M.P. No. 12643 of 2002

P. Gokul Anand

APPELLANT

Vs

Commissioner of Prohibition and
Excise

RESPONDENT

Date of Decision: July 10, 2002

Acts Referred:

- Andhra Pradesh Excise Act, 1968 - Section 45, 46
- Andhra Pradesh Prohibition Act, 1995 - Section 12, 13(2), 7B, 8

Citation: (2002) 2 ALD(Cri) 201 : (2002) 4 ALT 522 : (2002) 4 RCR(Civil) 274

Hon'ble Judges: AR. Lakshmanan, C.J.; Ghulam Mohammed, J; G. Bikshapathi, J

Bench: Full Bench

Advocate: M. Govind Reddy, for the Appellant; Govt. Pleader, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

AR. Lakshmanan, C.J.

Heard Sri M. Govind Reddy for the petitioner and the learned Government Pleader for Excise for the respondents.

2. The owner of the vehicle bearing No. AP 11 T 1998 is the petitioner in this writ petition. On 22-12-2000, the Sub-Inspector of Police, Rayadurgam conducted a route watch at Khajaguda, stopped the autorickshaw and found 500 polythene sachets of I.D. liquor being illegally transported and registered a case in Crime P.R. No. 22/97 dated 27-2-1997 for an offence u/s 8 (b) read with Section 7-B of the A.P. Prohibition Act, 1995 and arrested the accused and also seized the autorickshaw. A show-cause notice was issued on 17-3-1997 as to why the vehicle should not be confiscated u/s 12 of the A.P. Prohibition Act, 1995 and Sections 45 and 46 of the A.P. Excise Act, 1968, as amended in Act No. 20 of 1994 dated 20-5-1994. The show-cause notice was served on the owner on 20-12-1999. The owner submitted his explanation through

representation dated 29-12-1999 stating that it is the mischief of the driver and he has no knowledge of the offence. The Deputy Commissioner of Prohibition and Excise ordered confiscation of the vehicle in favour of the Government u/s 13 (2) of the A.P. Prohibition Act, 1995 and the Assistant Commissioner of Police was requested to take further action to dispose of the confiscated property as per the rules and procedure in vogue and send compliance report.

3. Before the Deputy Commissioner of Prohibition and Excise the owner submitted his explanation stating that it is the mischief of the driver and he has no knowledge of the offence. In fact, the accused, viz., the driver of the auto-rickshaw also stated that he purchased the I.D. liquor sachets at Rs. 3/- from Nanakramguda from a known I.D. manufacturing centre for the purpose of selling at Ameerpet. The Deputy Commissioner held that since the vehicle is involved in transportation of the I.D. liquor, the contention of the owner of ignorance cannot be believed and that it is evident that he failed to exercise due diligence to see that the vehicle is not involved in the crime.

4. Being aggrieved by the order of the Deputy Commissioner, an appeal was preferred to the Commissioner of Prohibition and Excise, A.P., who by his order dated 5-6-2001 dismissed the appeal holding that since the vehicle was transporting the liquor illegally, the vehicle is liable for confiscation. Even before the appellate authority, the very same defence was taken by the owner that he had no knowledge about the transportation of I.D. liquor by the hirer, viz., the driver and therefore he requested for release of the vehicle. The Commissioner rejected the contention of the appellant holding that the lack of knowledge of the owner about illegal transportation would (sic. would not) free the vehicle from liability for confiscation and that Section 45 of the A.P. Excise Act nowhere states that knowledge or connivance of the owner is required to be established for determination of the liability for confiscation. It is further held that it is the responsibility of the owner to secure sufficient precaution by way of taking adequate security or indemnity bond from the hirer, viz., the driver for any act of illegality and possible confiscation of the vehicle given on hire/rent. In the result, the appeal filed by the appellant/writ petitioner was dismissed. Being not satisfied with the orders passed by the authorities below, the petitioner preferred the above writ petition to quash the order dated 5-6-2001 passed by the Commissioner of Prohibition and Excise and also for a consequential Mandamus to release the amount furnished as bank guarantee.

5. The petitioner while filing the writ petition has impleaded only the Deputy Commissioner of Prohibition and Excise and later he filed an application in W.P.M.P. No. 12643 of 2002 to amend the cause title from the Deputy Commissioner to the Commissioner of Prohibition and Excise in the affidavit, petition and miscellaneous petition as the relief sought is against the order of the Commissioner of Prohibition and Excise dated 5-6-2001. Accordingly, we allow the said amendment application.

6. Sri M. Govind Reddy, learned counsel for the petitioner submits that even according to the crime and occurrence report, nothing has been alleged against the petitioner and what all stated is that during the route watch the Sub-Inspector checked the vehicle and found I.D. liquor when the auto-rickshaw was driven by the driver/ accused, that the owner was not there at the scene of offence and that no allegations have been made against the owner. During the pendency of the writ petition, he furnished bank guarantee of Rs. 15,000/- in favour of Prohibition and Excise Department for release of the auto-rickshaw as it was lying down without proper care.

7. After the dismissal of the appeal, an order was passed to reconfiscate the auto-rickshaw. Even though there was an order to reconfiscate the vehicle, it is asserted by the learned counsel for the petitioner that the vehicle is still in his custody.

8. We have gone through the orders passed by the Deputy Commissioner as affirmed by the appellate authority. In our opinion, both the authorities have not considered the case put forward by the owner of the vehicle that he had no knowledge about the transportation of I.D. liquor by the hirer, viz., the driver, and that the case put forward by the owner is not acceptable since according to the respondents Section 45 of the A.P. Excise Act states that knowledge or connivance of the owner is not required to be established for determining the liability for confiscation. It is further mentioned in the order that it is the responsibility of the owner to secure sufficient precaution by way of taking adequate security or indemnity bond from the hirer/driver on any of the illegality and possible confiscation of the vehicle given on hire/rent. We are unable to countenance the finding rendered by both authorities. A perusal of the order impugned in this proceeding clearly goes to show that the same suffers from non-application of mind. Prior to passing of the impugned order, the explanation of the owner/writ petitioner had not been considered at all. Surmises and conjectures appear to be the basis of the said order and no material appears to have been placed before the confiscating authority and the appellate authority by the respondents. As indicated above, the authorities have merely proceeded on the basis that as the vehicle of the petitioner was being driven by the driver, the same ipso facto is liable to be confiscated. A Division Bench of this Court in the judgment reported in Shaik Gulam Rasool Vs. Government of A.P. and others, held that the law providing for confiscation is an appropriatory legislation, that the same has to be strictly construed and that before an order of confiscation is passed, the authority must satisfy itself that all the ingredients therefore are satisfied keeping in view the proposition of law in mind that confiscation is deprivation of the property. The Bench has further observed that existence of mens rea is also an essential ingredient and plays a vital role in such matters.

9. In view of the above, we have no hesitation to remit the matter back to the original authority for reconsideration of the case afresh. In any event, where an offence is said to have been committed, the owner of the vehicle can always show by producing evidence - both oral and documentary - that he had no knowledge therefor. The Supreme Court in the judgment in Amery Pharmaceuticals and Another Vs. State of Rajasthan, has clearly held that interpretation of the statute must be in consonance with the principles underlying the fundamental rights and that any provision, which visits an accused with adverse consequences, without affording him any remedy to disprove the item of evidence, which stands against his innocence, is inconsistent with the philosophy enshrined in Article 21 and the Court should interpret in such a manner so as to dilute it to make it amenable to Article 21. The same principle should also be applied even in relation to confiscation proceedings.

10. It is stated by the learned counsel for the petitioner that the bank guarantee executed by him is still in force. The petitioner shall renew the bank guarantee given from time to time till the matter is finally disposed of by the Deputy Commissioner of Prohibition and Excise. The vehicle, in the meanwhile, which is already in the custody of the petitioner, shall not be seized by the respondents. Till the disposal of the case by the authority, the petitioner shall not alienate or encumber the vehicle in any manner and undertake to produce the vehicle before the authorities concerned as and when required for the purpose of interrogation and investigation.

11. The writ petition is ordered accordingly. W.P.M.P. No. 12643 of 2002 is allowed. However, there will be no order as to costs.