

New Lucky Kirana And General Store vs The State Of Telangana on 16 May, 2024

THE HON'BLE SRI JUSTICE C. V. BHASKAR REDDY

WRIT PETITION No.13401 of 2024

ORDER:

This Writ Petition is filed to declare the confiscation order of the respondent No.3 vide Cr.No.B1/114/DCA/ P&Ex./Nrml/2024, dated 24.04.2024 passed in C.O.R.No.59 of 2024, dated 05.03.2024 against the petitioner in trade licensed shop vide TL No.1123/TL/2023, dated 23.12.2023 by confiscating the commodity 4998 Kgs. of black jaggery and 3600 Kgs. of Alum without considering the documents, not following the due process of law as illegal and arbitrary.

2. Heard learned counsel for petitioner and learned Assistant Government Pleader for Prohibition and Excise appearing for respondents.

3. The petitioner is carrying on business as proprietary concern under the name and style "New Lucky Kirana and General Stores" by obtaining trade licence certificate vide TL No.1123/TL/2023, dated 23.12.2023 and TIN No.36545749374 from the Tax department along with registration certificate under Food Safety and Standards Act, CVBR, J Wp_13401_2024 2006. It is the further case of the petitioner that respondent No.4 highhandedly came to the petitioner's shop on 05.03.2024, conducted raid and seized the material found in the shop i.e., 4998 Kgs. of black jaggery and 3600 Kgs. of Alum and put the locks to the shop without following due process of law. It is further case of the petitioner that on the confession of accused Nos.1 and 2, he was arrayed as Accused No.3 in COR No.59 of 2024.

4. Learned counsel for the petitioner has vehemently contended that mere transportation/possession of black jaggery is not an offence and the same is not prohibited under the provisions of the Telangana Excise Act, 1968 (for short "the Act") and the Rules made thereunder. Learned counsel further contended that the authorities have conferred power to seize the black jaggery in the event of reason to believe that the black jaggery is being used for manufacturing I.D.liquor and much reliance as been placed by the learned counsel for the petitioner in Full Bench Judgment of this Court in Ganesh Traders (Kirana and General Merchants), Dhermapuri, Karimnagar District v.

CVBR, J Wp_13401_2024 District Collector, Karimnagar and others 1. Learned counsel for the petitioner further submits that the Government has issued Circular Memo No.47802/Ex.III.1/2006-13, dated 20.12.2010 wherein the specific instructions have been issued to the authorities that black jaggery or rotten jaggery or any other form of jaggery or allied agricultural products and the same are not required to be seized merely on the ground that the black jaggery is being transported to use the same as substance for manufacture of I.D liquor, if the same is accompanied by valid documents.

5. Per contra, learned Assistant Government Pleader for Prohibition and Excise would submit that the petitioner, taking advantage of trade licence, is storing, transporting and selling black jaggery without disclosing the details of purchasers and not producing monthly statements and waybills and thus petitioner has violated the licence conditions and Excise Rules.

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6. In Ganesh Trader's case (1 supra) a Full Bench of this Court observed as under:-

"41. We may, however, hasten to add that unless the Commissioner, Collector, Police Officer or competent Excise Officer "has reason to believe" that black jaggery is intended to manufacture ID liquor mere keeping and/or transporting any other material cannot be violation of law. In such an event, it is always open to the accused to prove before the competent criminal Court that black jaggery was material intended not for manufacture of liquor but was intended for other purpose. The learned counsel for the petitioners have not placed before us any evidence/ material to show that black jaggery can also be used for other purposes. Be that as it may they only submitted that black jaggery or jaggery with which they were dealing was not intended for manufacturing liquor. In W.P.No. 354 of 2001 and W.P.No. 22705 of 2000 the learned Government Pleader has placed before us the report of the chemical examiner, which shows that the material seized from the petitioners contains debris, sand and other injurious substances.

52(b). Having regard to the provisions of Sections 13, 34 and 53 and 55 of the Excise Act, we must hold that if Commissioner, Collector, Police Officer or Excise Officer "has reason to believe" that black jaggery (material) is likely to be used for manufacture of ID liquor the same can be seized and persons can be arrested and subject to facts and circumstances of each case including any report of the chemical examiner a charge sheet can be filed under Section 34(e) of the Excise Act."

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7. This Court in Athukuri Subba Rao vs. The State Of Telangana 2, while considering the judgment of the Division Bench of this Court in Deputy Commissioner of (Prohibition and Excise) v. Shobalal 3 and the judgment of the Hon'ble Apex Court in State of Karnataka v. Krishnan 4 held as follows:-

"61. We are bound by the apex ratio and are of considered opinion that in matters of excise offences, the authorities and Courts should insist strict compliance with the provisions of the Excise Act.

62. Therefore, in these proceedings the petitioners cannot be given any relief for release of either black jaggery or vehicles involved. It is open to them to approach criminal court for release of crime property and in such an event, without being influenced by any contra observations made herein above, any consideration shall be

as per law."

8. In view of the settled legal position and as per the laid down by the Full Bench of this Court in Ganesh Traders case (1 Supra), this Court deems it appropriate to relegate the petitioner to file an appeal under Section 46C of the Act on the file of respondent No.2, challenging the confiscation Order dated 08.02.2024 passed by this Court in Writ Petition No.202 of 2024 1996 (1) ALT 915 (D . B .) 2 0 0 0 (7) S C C 8 0 C V B R , J W p _ 1 3 4 0 1 _ 2 0 2 4 o r d e r v i d e Cr.No.B1/114/DCA/P&Ex./Nrml/2024, dated 24.04.2024, passed by the respondent No.3. On filing such appeal, the respondent No.2 is directed to dispose of the same, in accordance with law, as expeditiously as possible. Pending adjudication of the appeal to be filed by the petitioner, the respondent No.3 is directed to release the 4998 of kgs. of black jaggery and 3600 kgs. of Alum to the petitioner, subject to his furnishing bank guarantee by way of Fixed Deposit Receipt (FDR) to the sum equivalent to the value of goods seized. The security to be furnished by the petitioner would be subject to the outcome of the result of the appeal.

9. With the above observations, this Writ Petition is disposed of. There shall be no order as to costs.

10. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

_____ C.V. BHASKAR REDDY, J 16.05.2024 Gkv/sus/scs