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Court : Karnataka

Decided On : Mar-01-1999

Reported in : 1999(2)ALD(Cri)20; ILR1999KAR2872; 1999(4)KarLJ320

Judge : M.P. Chinnappa, J.

Acts : [Karnataka Excise Act, 1965](#) - Sections 32, 34, 43-A, 53 and 54; [Indian Penal Code \(IPC\), 1860](#) - Sections 171-B

Appeal No. : Criminal Revision Petition No. 378 of 1997

Appellant : L. Srinivas

Respondent : The Authorised Officer and Superintendent of Excise, Bangalore Rural District, Bangalore

Advocate for Def. : Sri S.B. Pavin, Additional State Public Prosecutor

Advocate for Pet/Ap. : Sri H.K. Thimmegowda and ;Sri G. Vinod Kumar, Adv.

Judgement :

ORDER

1. On 1-12-1994 the S.I. of Police, Thyamagondlu Police Station registered a case in FIR No. 61 of 1994 under Sections 32 and 34 of Karnataka Excise Act read with

Section 171-B of the IPC on the complaint of one Vekatappa alleging that on 1-12-1994 at about 2.30 A.M. one matador van bearing Regn. No. KA-20/180 was found transporting liquor bottles without any licence, thereby committing the said offence. Therefore, the police seized the van and produced it before the authorised officer and also registered a case against the driver and owner of the vehicle. The driver being the power of attorney holder of the owner of the van filed an application to release the van in his favour before the respondent. The respondent after examining 5 witnesses has come to the conclusion that the van was found in possession of 3 boxes of liquor without licence. Therefore, he ordered the confiscation of the van. That order was questioned in Criminal Miscellaneous Appeal No. 7 of 1996 on the file of the II Additional District and Sessions Judge, Bangalore Rural District. The learned District Judge by his order dated 24-6-1997 dismissed the appeal confirming the order passed by the respondent. Hence, the petitioner has filed this application.

2. Heard the learned Counsel for the petitioner and the learned Additional State Public Prosecutor.

3. The learned Counsel for the petitioner at the very outset submitted that the prosecution has not taken prior permission from the Magistrate to search and seize the vehicle. There is no reason mentioned by the prosecution to seize the vehicle without the prior permission of the magistrate. Therefore, he submitted on that ground itself, the seizure of the vehicle is invalid. To substantiate his argument, he has drawn my attention to the decision rendered by their Lordships of the Supreme Court in *K.L. Subbayya v State of Karnataka*, wherein their Lordships have held:

'The Inspector of Excise who searched the car of the appellant had not made any record of any ground 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 Section 54 were not complied with.

Held, this rendered the entire search without jurisdiction and vitiated the conviction. Sections 53 and 54 contain valuable safeguards for the liberty of the citizen in order to protect them from ill founded or frivolous prosecutions or

harassment.

The definition of the word 'place' under the Act included vehicles which could include a car'.

In this case, from the perusal of the seizure mahazar or other records, there is 'nothing to indicate that the Investigating Officer has mentioned any reasons to search and seize the vehicle without prior permission of the Magistrate. Admittedly, there is no prior permission of the Magistrate to search and seize the vehicle. Under the circumstances of the case, the decision rendered by their Lordships referred to above is squarely applicable to the facts of this case.

4. The learned Counsel for the petitioner has also drawn my attention to Section 43-A of the Karnataka Excise Act, wherein it is stated as soon as the vehicle is seized, it shall be produced before the authorised officer but in this case, though the vehicle was seized on 1-3-1994 the same was kept with him till 6-3-1994. On 3-3-1994 a request was made to the authorised officer seeking permission to produce the vehicle. Though that permission was given on 3-3-1994, the same was produced before him on 6-3-1994. Thus there is a delay which has not been explained and it is also not in consonance with the requirement of Section 43-A of the Act.

5. Besides that from the perusal of the evidence, it is clear that the complaint was lodged by a person who was inimical towards the petitioner herein. This incident occurred during the general elections and it is also alleged that the liquor was being transported for the purpose of giving it to the voters, etc. Under those circumstances, it required cogent and convincing evidence to establish that this petitioner was transporting liquor without permit and that the seizure was done in accordance with law.

6. The learned Counsel for the petitioner further argued that there is nothing to indicate the involvement of the owner of the vehicle. However, that question need not be delved upon at this stage as this petition will have to succeed on the other grounds mentioned above.

7. For the foregoing reasons this petition is allowed and the impugned order is set aside. The petitioner is entitled for the return of the vehicle. The vehicle has already been given to the interim custody of the petitioner and he shall hold the same absolutely.

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