

M. Krishnagouda Vs. Authorised Officer and Superintendent of Excise

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Court : Karnataka

Decided On : Mar-22-1996

Reported in : ILR1996KAR1951; 1996(3)KarLJ179

Judge : C.N. Ashwathanarayan Rao, J.

Acts : Karnataxa Excise Act, 1965 - Sections 2(18), 43A and 43B

Appeal No. : Cr.R.P. No. 83/1993

Appellant : M. Krishnagouda

Respondent : Authorised Officer and Superintendent of Excise

Advocate for Def. : B.M. Sateesh, HCGP

Advocate for Pet/Ap. : Basavaraj Reddy, Adv.

Disposition : Petition allowed

Judgement :

ORDER

C.N. Ashwathanarayan Rao, J.

This is a Revision Petition filed by the petitioner who is the owner of a Jeep bearing No. CND 3838 against an order passed by the Authorised Officer, Gulbarga on 26.06.1991 in Confiscation Proceedings No. 305/88-89 confiscating

the said Jeep under Section 43-A and 43-B of the Karnataka Excise Act, 1965 and confirmed by the learned Additional Sessions Judge, Gulbarga in Cr.A.No. 18/91 by the Judgment dated 26.11.92.

2. The facts which have led to this Revision Petition may briefly be stated as follows:-

'The Police Sub-Inspector, Station Bazar Police Station, Gulbarga on 19.10.1988 after collecting the Panchas, on credible information that, the Chloral Hydrate was being transported in a Jeep near Shanti Nagar, proceeded with his staff and Panchas near Shantinagar Cross Road and kept road watch. At about 7.30 a.m. the Jeep bearing No. CND 3838 was found coming from Gabbur Road towards Gulbarga City. The Jeep was stopped. The Jeep was searched and found that, there were four wooden boxes each containing 20 kgs. of Chloral Hydrate. A small quantity of Chloral Hydrate was taken as sample from each box for Chemical Analysis. The Police Sub-Inspector took jeep with seized contraband articles in his custody, and case was registered under Section 13 read with 32 of Karnataka Excise Act, 1965 in Cr.No. 192/88, dated 19.10.1988 at Station Bazar Police Station, Gulbarga.

The Owner of the Vehicle Sri K. Krishne Gouda pleaded for release of the vehicle on the grounds that, the vehicle was sent to Gangapur through driver for Pooja on 19.10.1988 and that while returning from Gangapur to Gulbarga some persons repeatedly requested the driver for transporting some luggage to Gulbarga Railway Station and the driver was not aware of the contents of the luggage. He pleaded that, the driver was ignorant of the contents of the wooden boxes and prayed for release of vehicle.'

3. After enquiry, the learned Authorised Officer rejected the contentions of the petitioner and holding that he is guilty of transporting the contraband articles in his Jeep, acting under Sections 43A and 43B of the Karnataka Excise Act, 1965 (hereinafter referred to as the 'Act') passed an order confiscating the Jeep. Being aggrieved by the said order, the petitioner preferred an appeal in the Sessions Court in Cr. A.No. 18/91 wherein the learned Sessions Judge confirmed the order passed by the Authorised Officer, by the Judgment dated 26.11.92. Being

aggrieved by the said Judgment and the order of the Authorised Officer, the petitioner has preferred this Revision Petition.

4. I have heard the learned Counsel for the petitioner and the learned High Court Government Pleader for the respondent and have perused the records.

5. The learned Counsel for the petitioner challenging the validity of the impugned order urged four grounds at the time of arguments. Firstly, he contended that there is no enquiry at all conducted by the Authorised Officer, no evidence has been recorded and it is not at all proved by the prosecution that the accused petitioner has committed any offence under the Act. Secondly, he contended that there is no material on record to prove that the seized Chloral Hydrate is an intoxicant within the meaning of the Act. Thirdly, he contended that the transportation of the alleged contraband article has not been proved. And lastly, the Authorised Officer has not pointed out in the impugned order as to the provisions of the Act which are violated by the petitioner. He contended that the learned Sessions Judge has not considered the evidence at all and has not applied his mind to any of these aspects in the impugned order.

6. In reply to the contentions of the learned Counsel for the petitioner that Chloral Hydrate is not an intoxicant, the learned High Court Government Pleader submitted that it is an intoxicant and comes within the ambit of Section-2 Clause 18(b) of the Act read with Schedule (b) Form No. S.D.9 under the Karnataka Excise (de-natured spirits and de-natured spirituous preparations) Rules, 1967. Section 2 Clause 18(b) defines 'Liquor'. It reads Liquor includes any other substance, which the State Government may by notification, declare to be Liquor for the purposes of this Act. Schedule Prom S.D. under the Rules says 1% by weight Chloral Hydrate may be used for industrial uses involving Chemical conversion of Alcohol. I find it is rather difficult to accept the arguments of the learned High Court Government Pleader. Neither of the provisions of law relied on, namely Section-2 Clause 18 or the schedule under the rules say that Chloral Hydrate of a particular weight is an Intoxicant or Liquor. Section 2 Clause 18(b) says that in case of any other intoxicant substance in order to bring it within the provisions of the Act, the State Government has to make a notification declaring it

to be Liquor for the purposes of this Act. The learned HCGP has not brought to my notice any such notification. A copy of any such notification has not been produced in the Lower Court Records also as could be seen. Now, the lower Court records contain the chemical examiners report dated 13.03.90. Even though it has not been marked as an Exhibit in the case, it can be relied on. It goes to show that four sealed boxes alleged to contain Chloral Hydrate were sent for chemical examination by the Investigating Officer in this case. The report says that the samples sent contained mud, other waste material and therefore, even though the presence of Chloral Hydrate was detected, in the samples, it is not possible to determine the percentage of Chloral Hydrate. The Chemical Examiners report, therefore is totally against the prosecution case, and does not help the Authorised Officer in any manner to establish that the properties seized in the case is Chloral Hydrate, the use of which or transportation of which has been prohibited under the provisions of the Act. In other words, there is nothing on record to show that Chloral Hydrate which is alleged to have been seized from the Jeep belonging to the petitioner is an intoxicant substance, within the meaning of Section-2 Clause 18(b) of the Act. Therefore, on these grounds alone the order passed by the learned Authorised Officer, which is confirmed by the learned Sessions Judge is liable to be set aside.

7. With regard to the contentions of the learned Counsel for the petitioner that no enquiry has been held in this case, the learned HCGP submitted that the impugned order passed by the Authorised Officer in Para 2 at Page 2 goes to show that in spite of sufficient opportunity given neither the petitioner nor his counsel appeared at the enquiry and therefore, the Authorised Officer is right in proceeding on the basis of the material available on record. I am unable to accept this argument. As rightly submitted by the learned Counsel for the petitioner, Section 43-B of the Act reads as follows:-

'No order confiscating any property shall be made under Section 43A unless the person from whom the same is seized.

a) is given a notice in writing informing him the grounds on which it is proposed to confiscate such property;

b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation; and

c) is given a reasonable opportunity of being heard in the matter.

8. The learned Counsel was right in submitting that these provisions read with the principles of natural justice clearly imply that an enquiry however formal, it may be in nature has to be held and the Authorised Officer before confiscating the vehicle in question is to be satisfied that the petitioner has contravened any of the provisions of the Act. In the case on hand, as pointed out by the learned Counsel for the petitioner, a perusal of the impugned order passed by the Authorised Officer goes to show that no enquiry was held, no witnesses have been examined and no documents have been marked. Even if the petitioner remained absent at the enquiry, it was incumbent upon the Authorised Officer to have gone through the material which was placed before him to show that there was a contravention of the provisions under the Act. There was absolutely no material to show that the property seized in the case namely Chloral Hydrate is an intoxicant or liquor within the meaning of the Act. The chemical examiner's report itself did not support such a contention. No witness was examined to prove that it was a contraband article under the Act and no notification as required under the law was produced. No doubt Section 43B Clause (2) of the Act provides that the owner of the vehicle has to take certain precautions and must establish that the transportation of the contraband article if any was not within his knowledge or convenience. The burden of establishing it is upon owner of the vehicle. But as rightly submitted by the learned Counsel for the petitioner, this question arises only if, initially the Authorised Officer establishes that contraband material was being transported in the vehicle, in question. In the case on hand the above discussion goes to show that there was no such evidence and therefore, the conclusion arrived at by the Authorised Officer in the last Para at Page 2 of the impugned order that he is convinced that the driver of the jeep was deliberately transporting the contraband articles namely, Four wooden boxes containing Chloral Hydrate is erroneous. Therefore, the fact that the petitioner remained absent at the enquiry, even presuming it so, does not validate the impugned order. At the enquiry it was

incumbent upon the Authorised Officer to have got marked the Mahazar under which the property is said to have been seized, and to have examined the mahazar witnesses if any, in order to satisfy himself about the alleged contravention. No such evidence has been recorded. I therefore find that there is no enquiry as contemplated under the law in this case. Consequently, the impugned order passed by the Authorised Officer cannot be sustained at all. There is much force in the contention of the learned Counsel for the petitioner that the learned Sessions Judge has not looked into any of these aspects and has simply confirmed the order of the Authorised Officer relying on the order alone. I therefore find that the Judgment of the learned Sessions Judge also cannot be sustained and this Crl. Revision Petition has to be allowed.

9. For the aforesaid reasons, the Petition is allowed. The impugned order passed by the learned Sessions Judge as well as the order passed by the Authorised Officer confiscating the seized Jeep is hereby set aside. The seized Jeep shall be returned to the petitioner.