

State of Karnataka and anr. Vs. Annayya

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Court : Karnataka

Decided On : Sep-08-2003

Reported in : 2004(3)KarLJ429

Judge : K. Ramanna, J.

Acts : [Karnataka Excise Act, 1965](#) - Sections 43A(2)

Appeal No. : Criminal Revision Petition No. 467 of 2001

Appellant : State of Karnataka and anr.

Respondent : Annayya

Advocate for Pet/Ap. : C. Ramakrishna, High Court Government Pleader

Disposition : Petition allowed

Judgement :

ORDER

K. Ramanna, J.

1. This revision petition is directed against the order dated 12-2-2001 passed by the Principal Sessions Judge, Mangalore, in Cri. A. No. 141 of 1997 whereby the learned Sessions Judge allowed the appeal and set aside the order dated 1-9-1997 passed by the Authorised Officer and Additional Superintendent of Excise,

Mangalore, in No. SDK/ DBCR/485/94. Feeling aggrieved by the said order the State has come up with this revision.

2. The accused by name Mahesh Gowda and Ramesh were found transporting 300 sachets of arrack in an autorickshaw without valid licence and permit. The same were seized by the Excise Authorities. After registering a case the said goods along with autorickshaw were produced before the Authorised Officer and Additional Superintendent of Excise, Mangalore, for confiscation. Accordingly, the Authorised Officer after holding an enquiry confiscated the autorickshaw bearing No. MEG 7363 belonging to the respondent by an order dated 1-9-1997. Accordingly, the respondent-Annayya, said to be the owner of the autorickshaw preferred an appeal before the Principal Sessions Judge, Mangalore, in Cri. A. No. 141 of 1997. After hearing both sides the learned Sessions Judge set aside the order dated 1-9-1997 passed by the Authorised Officer confiscating the autorickshaw to the State.

3. In this behalf the learned High Court Government Pleader submitted that a parallel proceedings has been initiated against the accused persons as well as the owner of the autorickshaw and since autorickshaw has been used to transport 300 sachets of arrack without valid licence or permit therefore the excise authorities seized the autorickshaw as well as the properties carried in that autorickshaw and also arrested Mahesh Gowda and Ramesh. Merely because; the Trial Court acquitted the aforesaid accused in C.C. No. 1906 of 1996 for the offence for which they were charge-sheeted does not mean that this vehicle has not at all been used for transporting 300 sachets of arrack.

4. I have carefully examined the judgment under challenge passed by the Sessions Judge. Having heard the arguments the point that arises for consideration and decision is whether the judgment and order passed by the Principal Sessions Judge by setting aside the order of confiscation passed by the Authorised Officer is incorrect or illegal, if so, whether it calls for interference?

5. The learned Sessions Judge, by relying on a decision in Authorised Officer and Deputy Conservator of Forests, Bagalkot v. Ramakrishnappa Kedarba Urankar, set aside the order passed by the Authorised Officer. In that case confiscation of

the vehicle used for transporting the sandalwood was seized. But, the vehicle used for commission of an offence was released. The acquittal of accused persons in criminal cases is nothing to do with the order of confiscation of the vehicle passed by the Authorised Officer.

6. The Apex Court in the case of Divisional Forest Officer and Anr. v. G.V. Sudhakar Rao and Ors., with regard to initiation of parallel proceedings, held that:

' . . . The conferral of power of confiscation of seized timber or forest produce and the implements etc., on the Authorised Officer under Sub-section (2-A) of Section 44 of the Act on his being satisfied that a forest offence had been committed in respect thereof, is not dependent upon whether a criminal prosecution for commission of a forest offence has been launched against the offender or not. It is a separate and distinct proceeding from that of a trial before the Court for commission of an offence'.

7. In criminal cases the prosecution is expected to prove the charge beyond reasonable doubt. In such type of cases no independent witness will come forward to support the case of the prosecution. In most of the cases the eye-witnesses will not come forward to prove the seizure of the property for the reasons best known to them. Therefore, when once the property has been seized by the Excise Officers on the ground that the persons who were transporting the arrack without permit or licence then it is to be presumed that the accused persons were illegally transporting the arrack without valid permit issued by the Competent Authorities. When a vehicle is used for transporting liquor without permit or licence then that vehicle should be confiscated. Therefore, the reasons assigned by the learned Sessions Judge, since the accused 1 and 3 were acquitted for offence punishable under the provisions of the Karnataka Excise Act, does not give any room for setting aside the order. Under these circumstance, the judgment dated 12-2-2001 passed by the learned Sessions, in setting aside the order passed by the Authorised Officer, is perverse and hence it is liable to be set aside.

8. Accordingly, the revision petition is allowed, the judgment and the order dated 1-12-2001 passed by the learned Sessions Judge is hereby set aside and the order dated 1-9-1997 passed by the Authorised Officer is confirmed.

