

Ganesan Vs. the State

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Court : Chennai

Decided On : Apr-26-1996

Reported in : 1997CriLJ126

Judge : M. Karpagavinayagam, J.

Appeal No. : Cri.R.C. No. 806 of 1995 and Cri.R.P. No. 805 of 1995

Appellant : Ganesan

Respondent : The State

Advocate for Def. : B. Sriramulu, Public Prosecutor

Advocate for Pet/Ap. : R. Balasubramaniam, Adv.

Judgement :

ORDER

1. This is a revision referred by the petitioner Ganesan, against the Order dated 20-9-1995, passed in CrI.M.P. No. 102 of 1995, on the file of the Court of Sessions, South Arcot Vallalar District at Cuddalore, confirming the order of confiscation, confiscating a mini-lorry, bearing registration No. TSF 3117, in R.C. Camp/L. 4/Confs/94, dated 30-11-1994.

2. The facts of the case need narration :-

On 10-8-1993 at about 8.00 a.m. while the Sub-Inspector of Police, Reddichavadi Police Station was making vehicle check up opposite to the Reddichavadi Police Station in Pondy-Cuddalore Main Road, he noticed a mini lorry bearing registration No. TSF 3117 coming and intercepted the same. When, it was checked he found 3804 IMEL sealed liquor bottles in it on transit from Pondy to Tamil Nadu without any valid licence or permit. He arrested the driver Michel, seized the contraband and the mini lorry under mahazar. A case was registered in Reddichavadi Police Station Cr. No. 381 of 1993, under Section 4(1)(a) of the Tamil Nadu Prohibition Act, 1937, during investigation, it was found that the petitioner Ganesan is the owner of the said mini-lorry.

3. During the course of investigation, a report and an affidavit have been submitted by the Inspector of Police to the Superintendent of Police, Prohibition Enforcement Wing, the Confiscating Officer, requesting for confiscation of the mini-lorry, since the said lorry was used for the commission of the offence under the Tamil Nadu Prohibition Act.

4. On 15-10-1993, a show cause notice was sent to the petitioner, which was acknowledged by him on 31-10-1993. On 5-11-1993, the petitioner sent a reply, stating that he was innocent. After receipt of the reply, again an opportunity was given to the petitioner, in order to establish his innocence in a personal hearing, by posting the matter on 3-12-1993, again on 28-12-1993 and again on 22-1-1994. But in all these hearing, the petitioner Ganesan did not choose to appear. Finally, a memo was sent, directing the petitioner to appear on 19-2-1994. On that date, he appeared and requested for adjournment to 25-2-1994. On 25-2-1994, the petitioner appeared in person and gave a statement to the confiscating authority. After perusal of all these records, the confiscating authority came to the definite conclusion, that the petitioner Ganesan has actively and intentionally allowed his lorry in the transport of IMEL bottles, without any valid permit or licence.

5. In exercise of the powers conferred on the confiscating authority under Section 14(4) of the Tamil Nadu Prohibition Act, 1937, final order was passed by the Confiscating Officer (Superintendent of Police, P.E.W., Chengai MGR Zone), directing the petitioner Ganesan to pay a sum of Rs. 70,000/- being the present

approximate market value of the said mini-lorry, in lieu of the confiscation, within ten days from the date of receipt of the order. In the order itself, the confiscating authority indicated the right of the petitioner to file an appeal to the Court of Sessions, if he is aggrieved by that order. On receipt of this order, the petitioner filed a petition, instead of appeal, in Cri.M.P. No. 102 of 1995, on the file of the Sessions Court, Cuddalore, seeking to set aside the order of confiscation dated 30-11-1994.

6. The main contention raised before the appellate Court was that while the case was pending before the learned Judicial Magistrate No. 1, Cuddalore in C.C. No. 76 of 1995 and while the vehicle was ordered to be returned to the petitioner on executing a bond, the confiscating officer, had no power to confiscate, by invoking Section 14(4) of the Act. The above point has been elaborately considered by the appellate Court and a conclusion has been arrived at that as per Section 14(4) of the Act, the confiscating authority has got powers to order confiscation, irrespective of the pendency of the Criminal case. The said order was passed by the learned Sessions Judge, Cuddalore, on 20-9-1995. Aggrieved over this, the present revision has been restored to before this Court under Sections 397 and 401, Cr.P.C.

7. Mr. R. Balasubramaniam, learned counsel for the petitioner, though raised several points in the revision petition, confined himself to only the point, which is as follows :-

'The confiscating authority held that the petitioner is guilty of transporting liquor under Section 4(1)(a) of the Act, which is wrong, since on the records available the transport was from Pondicherry to Tamil Nadu and therefore would not amount to transporting liquor. Sub-section 20 of Section 3 of the Act, defines 'transport' as meaning to move from one place to another within any local area to which this Act applies. Admittedly the alleged transport that took place in this case was from Pondicherry to Madras and so the Tamil Nadu Prohibition Act will not apply, since the transport in this case was not from one place to another, within any local area to which the Act applies. In other words, since the starting point of the transport was at Pondicherry, this Act does not apply'.

The confiscation of mini-lorry for the transport from Pondicherry to Tamil Nadu would not attract Section 3 of the Act, and as such, the confiscation is liable to be set aside.

8. Mr. B. Sriramulu, learned Public Prosecutor, contended that the confiscating authority under Section 14(4) of the Act has get powers to confiscate vehicles, which involved in any offence under the Prohibition Act, when the owner of the vehicle failed to establish his innocence, nor his non involvement in the commission of the offence and that in this case, the vehicle was in 'transit' from Pondicherry to Madras and as such it was involved in the offence and that the petitioner did not avail the opportunity to disprove the fact that he had no knowledge about the use of the vehicle for the commission of the offence. He further contended that the offence may be either by transport or by possession, and therefore, even if it cannot be construed to be a transport, the offence to 'possession' is made out, and as such Section 14(4) of the Act could be applied for confiscation.

9. I heard the submissions made by the respective parties and perused the records and other materials. At the outset, I must say that this point which has been urged by learned counsel for the petitioner in this Court, has not been raised either before the confiscating authority or before the appellate Court. As such, this point is raised before this Court for the first time. Any way, this Court does not want to stand on the technicality and so, learned counsel for the petitioner was allowed to make and substantiate that submission, in order to give a proper consideration and disposal of the matter.

10. Before answering this question, let me refer the relevant provisions of the Act. Section 3(2) of the Act defines transport :-

"Transport' means to move from one place to another within any local area to which this Act applies'

The word 'transit' is defined in Section 3(19A) of the Act :-

"Transit' means to move through the territory of the State of Tamil Nadu from any place in India outside the State of Tamil Nadu to any other place in India outside the State of Tamil Nadu'.

Section 4 of the Act deals with the prohibition of the manufacture of traffic in and consumption of liquors and intoxicating drugs. Under Section 4(1) of the Act, whoever imports, exports, transports or possesses liquor or intoxicating drug; shall be punished.

11. Under Section 13A of the Act, whenever an offence in relation to liquor has been committed, which is punishable under this Act or the Rules made thereunder, any liquor, material, utensil, any animal, cart, vessel or other conveyance used for carrying the same shall be liable to be confiscated. Under the proviso to Section 13A of the Act, the confiscation cannot be done, if the owner of the vessel, or other conveyance had no reason to believe that such offence was being or likely to be committed.

12. Section 14 of the Act, deals with, a question as to how the confiscation is being done. Under Section 14(1) of the Act, irrespective of the fact, whether the offender is convicted or acquitted, if the Court decides that anything is liable to confiscation, such confiscation shall be ordered by the Court. Under Section 14(2) of the Act, even during the trial of a case for an offence against this Act, the Court can order confiscation of the vehicle, and if the Court after hearing the owner of the vehicle is satisfied that the owner had exercised due care in the prevention of the commission of such an offence no vehicle shall be confiscated.

13. Under Section 14(4) of the Act, if the Prohibition Officer in charge of the District is satisfied that an offence has been committed against this Act, and whether or not a prosecution is justified for such offence, he may without prejudice to any other punishment to which the offender is liable under this Act, order confiscation of such vehicle used for the commission of the crime. Under proviso to Section 14(4) of the Act, before passing an order of confiscation, the owner of the vehicle shall be given a notice in writing informing him of the grounds on which it is proposed to confiscate the vehicle and he should be given an opportunity to make a representation in writing against the grounds of confiscation and lastly to give a

reasonable opportunity of being heard in the matter.

14. Under section 14-A of the Act, where any vehicle is used in the commission of any offence under this Act and is liable to confiscation, the owner thereof shall be deemed to be guilty of such offence and such owner shall be liable to be proceeded against and punished accordingly, unless he satisfies the Court that he had exercised due care in the prevention of the commission of such an offence.

15. These sections of the Act would reveal, the details of the procedures to be followed before ordering confiscation. On the basis of these provisions, learned counsel for the petitioner submits that since the transaction which took place in the instant case would not come under the definition of either 'transport' or 'transit', the confiscating authority ought not to have come to the conclusion that an offence has been committed under this Act, which entitled the authority to confiscate the vehicle under Section 14(4) of the Act. At the same time, learned counsel for the petitioner fairly admits that sufficient opportunity has been given to the petitioner, in order to show that as the owner, he had no knowledge about the misuse of the vehicle.

16. The records would reveal, as referred to earlier, that several adjournments were made, even despite the absence of the petitioner on some hearings, before the confiscating authority. Even after the appearance of the petitioner before the confiscating authority, the matter was adjourned on two occasions at his requests, to enable him to satisfy the confiscating authority that he had exercised due care in the prevention of the commission of the offence.

17. It is clear from the materials available on record that except the reply to the show cause notice and the statement before the authority on the personal hearing, stating that he had no knowledge, nothing has been produced before the confiscating authority to show that the petitioner had exercised due care in the prevention of the commission of such an offence. As such, the conclusion arrived at by the confiscating authority that he is satisfied that an offence has been committed in respect of the vehicle under this Act, and the vehicle was liable to be confiscated, would be well merited.

18. The only point that has been urged, as stated earlier, is that this is not a 'transport', since the contraband was taken from Pondicherry to Madras and the same was intercepted and seized near Reddichavadi Police Station, and that when this cannot be considered to be a 'transport' as provided in Section 3(2) of the Act, the order of confiscation is liable to be set aside, though there was a failure on the part of the petitioner, the owner of the vehicle to satisfy the authority that he had exercised due care in the prevention of such an offence in respect of the vehicle. To substantiate this contention, learned counsel for the petitioner cited several decisions, which I shall refer later.

19. Though this argument looks attractive at the first blush, a deep probe into this aspect, by applying the relevant provisions of the Act, would make it clear that this submission cannot be sustained. Section 14(4) of the Act, reads thus :-

'Notwithstanding anything contained in sub-sections (1) to (3) if the Collector or other Prohibition Officer-in-Charge of the district or any other office authorised by the State Government in that behalf is satisfied that an offence has been committed against this Act and whether or not a prosecution is instituted for such offence, he may without prejudice to any other punishment to which the offender is liable under this Act, order confiscation of any animal, vessel, cart or other vehicle used in the commission of such offence'.

So, the condition precedent for confiscation of the vehicle under Section 14(4) is that the confiscating authority must be satisfied that an offence has been committed in respect of the vehicle liable to be confiscated.

20. In the instant case, the prosecution case is that on the materials collected by the investigating agency, the vehicle was used for transport of the IMFL bottles from Pondicherry to Madras, without valid permit or licence under Section 4(1)(a) of the Act. Section 4(1)(a) provides four categories viz., imports, exports, transports or possession of liquor or intoxicating drug. This sub-section would show that import is different from export, but the word 'transport' is interlinked with the word 'possession'. That means, transport includes possession. In other words, mere possession may not involve the transport. But the transport includes the element of possession. As referred to earlier, the words 'transport' has been

defined as 'to move from one place to another within the same area. But the word 'possession' has not been defined. A person may be in possession of a contraband. Without even transporting it.

21. This question has been referred to by this Court in *Kandasami, In Re* : 1965 MLJ (Cri) 114, in which Ananthanarayanan, J. (as he then was) held that when a person found in possession of the contraband, while engaging in his transport, that person is liable to be convicted for possession and also liable to be convicted for a distinct offence of transport. It is also held in the same decision, that when a person is found to be in possession of contraband and committed an offence of transport, the ultimate analysis could be done only by the trial Court to determine on the facts of each case whether there is transport within the meaning of Section 4(1)(a) of the Madras Prohibition Act. In doing, so, the Court should consider the quantity of liquor, the alleged mode of transport, the places between which the liquor is alleged to have been transported and other circumstances and give some common sense meaning to the word'.

22. On the basis of the above observations, whether it would be a transport or mere possession, is a question to be decided by the Trial Court, after the evidence which is to be let in before it during the trial. But, now the question before this Court is whether an offence has been committed under this Act, in respect of the vehicle or not. Admittedly, the vehicle has crossed i.e., entered the border of Tamil Nadu and after moving several kilometers in Tamil Nadu it was intercepted at Reddichavadi Police Station. So, it may also be possible to conclude that the transport of IMFL bottles took place from Tamil Nadu boundary line to the place where the liquor was seized, to attract the definition of 'transport' under the Act. Whatever it is, as laid down by this Court in the above referred decision, this is a matter to be decided by the trial Court, after appreciation of evidence, for punishing a person for an offence of transport. But, this is a clear case attracting the penal provisions of the Act, since the vehicle was used for commission of an offence of transporting or possessing the liquor without valid licence or permit. As such, there is no bar for the confiscating officer, under Section 14(4) of the Act, to confiscate the vehicle, which has been done correctly in this case.

23. The authorities referred to by the learned counsel for the petitioner in *State of Andhra Pradesh v. Madiga Boosenna*, 1967 MLW (Cri) 103 : 1967 Cri LJ 1398 (SC); *Vella Pinna* 1970 MLW (Cri) 123 and *Murugan, In Re : Thevar in Re : 1970 MLW (Cri) 233*, cannot be applicable to this case, because in those cases, the prosecution has failed to prove that what has been seized from the accused was liquor. That question does not arise in this case.

24. This Court in *M. P. Govindaraj, In Re : 1966 MLW (Cri) 166* has held that when the prosecution case was that the petitioner was taking a certain quantity of french polish from Karaikal under the strength of a gate pass issued by the authorities at Karaikal to Bangalore, for which he had a permit issued by the Mysore Excise Department, that he was apprehended in the Madras State in the middle of the journey and the petitioner was tried for an offence of transporting within the Madras State, which is punishable under Rule 6(ii) of the Rules. It is also observed in that decision that, 'transport from one place to another place means transport from the starting point to the ultimate destination. It is a question of fact for the Court to determine what the destination may be. But merely passing through a place in the course of a journey does not, amount to transporting to that place'.

25. However, this is not applicable to the present case, because this is not a case, whether under the permit he goes to the different State through the Madras State. Since the question, whether transport or possession is to be decided by the trial Court, on the basis of the materials produced before the Court, after the evidence let in on either side. I do not propose to decide about the question of fact at this stage. However, the confiscating authority, in this case decided that an offence has been committed under this Act, in respect of the vehicle and so, by invoking the powers u/S. 14(4) of the Act, he directed the petitioner to pay a sum of Rs. 70,000/- being the present approximate market value of the mini-lorry, used for such an offence, in lieu of confiscation. The appreciation of evidence in trial is entirely different from the consideration of the materials for confiscation.

26. Yet another decision in *Emperor v. Dagadu Shetiba*, : AIR1938 Bom43 has been referred to by learned counsel for the petitioner. In that case, it was held while acquitting the accused, that transportation from one place to another did not

involve transportation to every place between those two places, and that the accused should not therefore, be deemed to have transported liquor to Dadar in Bombay. However, the principle laid down by Bombay High Court in this case is not accepted by this Court in *Kandasami In Re* : 1965 MLJ (Cri) 114.

26. For the foregoing analysis of the relevant aspects, I am of the considered opinion, that there is no illegality or infirmity in the order passed by the confiscating authority, which has been confirmed by the learned Sessions Judge, Cuddalore. As such, the revision, which has no merit deserve to be dismissed and the same is accordingly dismissed.

26-4-1996.

The learned counsel requests time for payment. Accordingly the time is granted for a period of two months from the date of receipt of copy of this order or before 30-6-1996 which ever is earlier.

27. Petition dismissed.

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