

THE COMMISSIONER, PROHIBITION AND EXCISE, A.P. AND ANR.

v.
SHARANA GOUDA

JUNE 5, 2007

[DR. ARIJIT PASAYAT AND D.K. JAIN, JJ.]

Andhra Pradesh Excise Act, 1968

Section 45, proviso—Vehicle of owner found being used by third person for carrying contraband liquor—Confiscation of vehicle—Set aside by High Court on the ground that there was no mens rea involved—Held:—Effect of omission of the proviso has not been considered by High Court—Order of High Court set aside.

A jeep of the respondent was taken by his friend on 20.11.1994, for his use, later, he came to know that the said vehicle was checked by Excise officials and it was found carting contraband liquor. The vehicle was directed to be confiscated. The respondent filed writ petition before the High Court contending that he was owner of the vehicle and had no knowledge that it was being used for carrying contraband liquor. The High Court accepted the plea on the ground that there was no *mens rea* involved.

It was contended for the appellants-Excise authorities that the High Court completely lost sight of Section 45 of the A.P. Excise Act, 1968 as, at the relevant point of time, the question of *mens rea* was not totally irrelevant.

On the question: Whether *mens rea* was required to be established by the prosecution,

Allowing the appeal, the Court

HELD: The effect of omission of the proviso to s. 45 of the A.P. Excise Act, 1968 does not appear to have been considered by the High Court. When the proviso was part of the statute at that stage there was a prohibition on confiscation if owner of the property in question had no reason to believe that such offence was being or was likely to be committed. This was the position if offender was not the owner of the property. The position has changed after

A omission of the proviso. The High Court does not appear to have kept this aspect in view. Therefore, the judgement of the High Court is indefensible and is set aside. [Para 9] [938-A, B]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1137 of 2002.

B

From the Judgment and Order dated 11.07.2002 of the High Court of Judicature of Andhra Pradesh at Hyderabad in Writ Petition No. 27180 of 1999.

Debojit Borkakati (for D. Bharathi Reddy) for the Appellant.

C

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the judgment of Division Bench of the Andhra Pradesh High Court in writ Petition 27180 of 1999. By the Impugned judgment, the High Court held that vehicle which was seized for alleged commission of offence punishable under the Andhra Pradesh Excise Act, 1968 (in short the 'Act') i.e. carrying contraband liquor was to be returned to the respondent.

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2. Writ petition was filed by the respondent with the following averments:

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On 21.11.1994 a close friend of the respondent by name Banappa took the said jeep for his use and subsequently the respondent came to know that the vehicle was cheked by the excise officials on 21.11.1994 and they found in the vehicle two cartons of IML each containing 46 nips. The 2nd respondent in the High Court (present appellant no. 2) registered the case under the provisions of the Act. The respondent represented to the authorities that he is not involved in the alleged offence and he had no knowledge or consent for the alleged offence and that since the vehicle was used by a third party, the proceedings for confiscation are not warranted.

F

3. The 2nd respondent in the High Court i.e. present appellant no. 2 rejected the request of the respondent for interim custody of the vehicle pending proceeding, by order dated 7.1.1995. Subsequently after obtaining orders from the High Court in writ petition No. 20291 of 1995, dated 17.9.1995 and after furnishing bank guarantee for a sum of Rs. 48,000/- the respondent was given custody of the vehicle Subsequently, present appellant no.2 directed confiscation of the vehicle.

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4. Respondent filed writ petition before the High Court questioning orders passed by the appellant no.2 and the appellate authority i.e. present appellant no. 1 it was submitted that respondent (writ petitioner) was the owner of the Vehicle and had no knowledge that the vehicle was being used for carrying contraband liquor. The High Court accepted the plea on the ground that there was no *mens rea* involved.

5. In support of the appeal, learned counsel for the appellant submitted that the High Court has completely lost sight of Section 45 of the Act. At the relevant point of time the question of *mens rea* was totally irrelevant.

6. The respondent is not represented in spite of the service of notice.

7. The only question for consideration is whether *mens rea* was required to be established by the appellant. In this connection Section 45 of the Act needs to be noted. There was originally a proviso to sub-section (2) thereof. The said proviso was omitted by Andhra Pradesh Act 4 of 1994 w.e.f. 26.11.1993. Section 45 after the omission of the proviso reads as follows:

“45 Liability of certain things to confiscation: -Whenever an offence has been committed, which is punishable under this Act, following things shall be liable to confiscation, namely :-

(1) any intoxicant materials, still, utensil, implements, or apparatus in respect of or by means of , which such offence has been committed:

(2) any intoxicant lawfully imported, or transported, manufactured, had in possession, sold or brought along with, or in addition to any intoxicant liable to confiscation under clause (1); and

(3) any respectable, package, or covering in which anything liable to confiscation under clause (1) or clause (2), is found, and the other contents, if any, of such receptacle, package or covering and any animal, vehicle, vessel raft or other conveyance used for carrying the same”

8. The proviso which has been omitted reads as follows:

“Provided that, if anything specified in clause (3) is not the property of the offender, it shall not be confiscated if the owner thereof had no reason to believe that such offence was being or was likely to be committed.”

A 9. The effect of omission of the proviso does not appear to have been considered by the High Court. When the proviso was part of the statute, it was provided that any thing specified in clause (3) of Section 45 is not the property of the offender, it shall not be confiscated if the owner thereof had no reason to believe that such offence was being or was likely to be committed.

B At that stage there was a prohibition on confiscation if owner of the property in question had no-reason to believe that such offence was being or was likely to be committed. This was the position if offender was not the owner of the property. The position has changed after omission of the proviso. The High Court does not appear to have kept this aspect in view. Therefore, the impugned judgment of the High Court is indefensible and is set allowed.

C 10. The appeal is allowed.

RP.

Appeal allowed.