

A DY. COMMISSIONER OF PROHIBITION AND EXCISE,
NIZAMABAD DIVISION, NIZAMABAD,
ANDHRA PRADESH AND ANR.

v.

M/S. BALAJI CATTLE FEEDS AND ANR.

B

AUGUST 31, 2004

[S.N. VARIAVA AND ARIJIT PASAYAT, JJ.]

C

Constitution of India, 1950 :

*Article 226—Writ petition—Seeking to quash criminal proceedings—
Tanker containing molasses seized and criminal proceedings initiated
against claimants—High Court quashing the proceedings and directing
release of articles—Held, whether the material already on record and to
D be collected during investigation would substantiate the accusation is a
matter of trial—High Court not justified in quashing the proceedings—
Andhra Pradesh Excise Act, 1968—Andhra Pradesh Prohibition Act, 1995.*

**The High Court in a writ petition quashed the proceedings
E initiated against the respondents under the A.P. Excise Act and the
A.P. Prohibition Act, and directed release of the tanker and molasses
holding that there was no material to show that the seized articles were
intended to be used for manufacturing illicit spirit.**

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Allowing the appeal filed by the State, the Court

**HELD : The High Court was not justified in quashing the entire
proceedings. The statement of the driver of the vehicle and the
Panchnama show that there was some material to proceed against the
respondents. This cannot be said to be a case where commission of
G offence was not disclosed. Whether the materials already on record
and to be collected during investigation would substantiate the
accusation is a matter of trial. The High Court erred in holding the
proceedings initiated against the respondents to be without authority
of law. The direction for release of the vehicle and the seized articles
H cannot be sustained. The proceedings shall revive and continue in**

accordance with law. [1004-B-C, E-H; 1005-A]

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State of Andhra Pradesh v. Goloconda Linga Swamy and Anr. (2004)
AIR SCW 4329, relied on.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1182 of 2003.

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From the Judgment and Order dated 25.11.2002 of the Andhra Pradesh High Court in W.P. No. 19006 of 2002.

Mrs. D. Bharathi Reddy for the Appellants.

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K.K. Mani for the Respondents.

The Judgment of the Court was delivered by

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ARIJIT PASAYAT, J. : The State of Andhra Pradesh is in appeal against the judgment of learned Single Judge of the High Court of Andhra Pradesh allowing the writ petition filed by the respondents. By the impugned judgment it was held that the proceedings initiated against the respondents in seizing molasses along with tanker while in transit and confiscating the same is without any authority of law. The High Court accepted the plea that there was no material to show that the seized articles were intended to be used for manufacturing of rectified spirit.

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In support of the appeal, learned counsel appearing for the State of Andhra Pradesh submitted that the High Court's approach is clearly erroneous. This was not a case where there was no material to show the commission of alleged crime. Whether there was adequate material already in existence or which could have been collected during investigation and their relevance is essentially a matter of trial.

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Per contra, learned counsel for the accused-respondents submitted that on mere surmises and conjectures that the molasses being transported was intended to be used for the purpose of manufacturing illicit distilled liquor. Suspicion however strong cannot be a ground to initiate criminal proceedings thereby unnecessarily harassing the innocent transporters. It

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A was further pointed out that the High Court has merely directed release of the tanker as well as the molasses and criminal proceedings have not been quashed.

B Similar question came up for consideration before this Court in a batch of cases, in *State of Andhra Pradesh v. Goloconda Linga Swamy and Anr.*, (2004) AIR SCW 4329. In those cases FIRs filed were quashed by exercise of power under Section 482 of the Code of Criminal Procedure, 1973 (in short the 'Code'). This Court set aside High Court's judgment. In the present case, like the aforesaid batch of cases, the statement of the driver of the vehicle and the Panchnama show that there was some material to proceed against the respondents. Obviously, the acceptability of the materials to fasten guilt on the accused is a matter of trial. This cannot be said to be a case where commission of offence was not disclosed.

D Stand of the learned counsel for the respondents-accused that the prayer in the writ petition was for release of the vehicle and the seized articles is clearly untenable. In fact, the High Court has clearly noted that the prayer was to quash the entire proceedings and additionally for release of the seized tanker and the articles. By the impugned judgment, the High Court has quashed the entire proceedings and has consequently directed release of the seized tanker and the molasses. The operative part of the High Court's order reads as follows:

F "In view of the same, entire proceedings initiated by the respondents-authorities in seizing the molasses along with tanker while in transit and confiscating the same is without any authority or law and the same is accordingly set-aside. Consequently, the respondents are directed to release the tanker as well as molasses, which was seized pursuant to the registration of Cr. No. 132/2002-2003 dated 30-8-2002 by the S.H.O. Zaheerabad."

G Since the proceedings were held to be without authority of law, consequentially direction for release was given. No other reason has been given for directing release.

H Therefore, the High Court was not justified in quashing the entire proceedings. That being so, the direction for release of the tanker and the

seized articles cannot be sustained. The proceedings shall revive and continue in accordance with law. Whether the materials already on record and to be collected during investigation would substantiate the accusation is a matter of trial. A

Learned counsel for the respondents submitted that an application shall be filed before the concerned Court for release of truck and the seized molasses. If such application is filed, the same shall be considered in accordance with law. B

The appeal is allowed. C

R.P.

Appeal allowed.