

**HON'BLE SRI JUSTICE BATTU DEVANAND****WRIT PETITION No.20906 OF 2020****ORDER:**

This writ petition has been filed to issue a writ, order or direction or any appropriate writ, more particularly one in the nature of Writ of Mandamus to declare the action of the respondents in registering the Crime No.309 of 2020 of Panyam Police Station, Panyam, Kurnool District for the alleged offence under Section 34 (a) of A.P.Excise Act, as illegal, arbitrary, violation of principles of natural justice and violation of G.O.Ms.No.411 dated 24.09.2019 and contrary to Excise Rules A.P.Excise Act, 1968 and consequently set aside the same by directing the respondents to release the Sedan Car bearing No.TS 09 UB 1647 to the petitioner pending disposal of the Writ Petition.

2) A counter-affidavit has been filed by the respondent No.5.

3) Heard Smt.Marella Radha, learned counsel for the petitioners and the learned Government Pleader for Prohibition & Excise appearing for the respondents.

4) Petitioner No.2 is the owner of Sedan Car bearing No. TS 09 UB 1647. Petitioner No.1 took the said car from Petitioner No.2 to visit Hyderabad. While petitioner No.1 was returning to Nandyal from Hyderabad on 24.07.2020, respondent No.5 seized the said vehicle alleging that he is carrying three Signature Ultra Premier Grain Whisky 750 ML bottles in the said vehicle.

5) Thereupon, respondent No.5 registered a case in Crime No.309 of 2020 of Panyam Police Station, Panyam, Kurnool District, for the offence punishable under Section 34(a) of A.P. Excise Act, 1968 as amended by Act 17 of 2020.

6) The learned counsel for the petitioners would submit that the 1<sup>st</sup> respondent issued notification in G.O.Ms.No.411, Revenue (Excise-II) Department, dated 24.09.2019 in exercise of power under Section 14(1) of A.P. Excise Act (ii), 1968, specifying the maximum quantity of intoxicants which a person may have in his possession at a time without a permit or license is three (3) bottles.

7) Learned counsel for the petitioners contends that as and when the Government issued G.O.Ms.No.411, dated

24.09.2019 permitting a person to possess the quantity of three (03) bottles, in the present case, the petitioner No.1 carried three bottles, which is permissible as per law, and therefore, the petitioners did not commit any offence as per Excise Act, 1968.

8) Learned counsel for the petitioners further submits that the action of the respondents in registering case against the petitioners and seizing the vehicle is arbitrary, illegal and contrary to the provisions of the A.P. Excise Act and Rules made thereunder and Government Orders issued time to time.

9) Learned counsel for the petitioners further submits that this High Court in similar circumstances in W.P.No.14380 of 2020 directed the respondents therein to release the vehicle by quashing all further proceedings under crime registered therein, as the same does not disclose any commission of offence. Accordingly, the learned counsel for the petitioners sought to allow the writ petition.

10) On the other hand, learned Government Pleader for Prohibition & Excise would submit that there is no doubt

that G.O.Ms.No.411, dated 24.09.2019 says a person can possess three (03) bottles of liquor, but it does not permit the person to transport and import them from other states. As such, registration of crime is not in violation of any Rules or not arbitrary and this is purely fit case for prosecution for offence under Section 34(a) of A.P. Excise Act.

11) Having heard the submissions of both the counsel and upon perusal of the material available on record, it is clear that the issue involved in the present writ petition is squarely covered by the order passed by this Court in W.P.No.14386 of 2020. In the said writ petition also the contentions of both parties are same. After considering rival contentions this Court allowed W.P.No.14386 of 2020. The finding of the Court in the said writ petition is extracted hereunder:

This Court is, therefore, of the clear view that the possession or the transportation of liquor and other intoxicants etc., upto the limits as per the G.O.Ms.No.441, which are as follows:

- \*1) Indian Made Foreign Liquor (IMFL) : 3 bottles of any size
- 2) Foreign Liquor (FL) : 3 bottles of any size.
- 3) Denatured/ emthylated spirit : 3 bulk litres
- 4) Beer : 6 bottles of 650 ml each
- 5) Toddy : 2 bulk litres
- 6) Rectified spirit / intoxicating drugs : Nil."

is not an offence whether the liquor is purchased in the State of Andhra Pradesh or if the liquor, etc., is purchased outside the State of Andhra Pradesh and is brought into the State of Andhra Pradesh.

For the above reasons W.P.No.14386 of 2020 is allowed. The action of the State in registering the crime on the ground that the alcohol is brought into Andhra Pradesh from the neighboring State is held to be bad in law. All further proceedings under Crime No.95 of 2020 of Rampachodavaram Police Station, are quashed, in line with the landmark judgment of the Hon'ble Supreme Court of India in **Bajanlal case** (3) since the uncontroverted allegations in the FIR etc., do not disclose the commission of any offence. Consequently, a direction is issued to the respondents to immediately release the vehicle bearing No.AP 31 ZG T/R 2970.

12) By following the proposition of law laid down by this Court in W.P.No.14386 of 2020, this writ petition is allowed with the following direction:

All and further proceedings pursuant to registering a case in Crime No.309 of 2020 of Panyam Police Station, Panyam Kurnool District, are hereby quashed.

13) Consequently, the respondents are directed to release the Sedan Car bearing No. TS 09 UB 1647 to petitioner No.2 forthwith.

14) There shall be no order as to costs.

As a sequel, miscellaneous petitions pending, if any, in the Writ Petition shall stand closed.

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**JUSTICE BATTU DEVANAND**

Date: 14.12.2021  
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**WRIT PETITION No. 20906 OF 2020**

Dt: 14.12.2021

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