

IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

DATED THIS THE 3RD DAY OF MARCH, 2021

BEFORE

THE HON'BLE MRS.JUSTICE M.G.UMA

CRIMINAL REVISION PETITION No.2024/2012

BETWEEN :

SRI MALLIKARJUN
S/O.MADIVALAPPA PATTANSHETTI,
AGED ABOUT 40 YEARS,
OCC-KIRANA BUSINESS,
R/O.RAMAPUR SITE, SAUNDATTI,
DIST-BELGAUM.

.....REVISION PETITIONER

(BY SRI ANAND R.KOLLI, SRI SANKET M.YENAGI, ADVOCATES)

AND :

1. THE JOINT COMMISSIONER OF EXCISE
(ENFORCEMENT AND INSPECTION),
BELGAUM DIVISION,
BELGAUM.
2. THE AUTHORISED OFFICER AND
DEPUTY COMMISSIONER OF EXCISE,
NAVANAGAR, HUBLI, DIST- DHARAWAD.

.....RESPONDENTS

(BY SRI RAMESH B. CHIGARI, HCGP)

THIS REVISION PETITION IS FILED UNDER SECTION 397
READ WITH SECTION 401 OF CR.P.C. SEEKING TO SET ASIDE

THE JUDGMENT AND ORDER DATED 03.12.2011 IN CRIMINAL APPEAL NO.23/2008 PASSED BY THE PRL. DISTRICT AND SESSIONS JUDGE, DHARWAD BY ALLOWING THE PRESENT REVISION PETITION, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS REVISION PETITION IS COMING ON FOR HEARING, THIS DAY, COURT MADE THE FOLLOWING :

ORDER

The revision petitioner-owner of the mini lorry bearing Registration No.KA-24/3097 is before this Court, being aggrieved by the impugned order dated 05.12.2007 passed by the Authorised Officer i.e., the Deputy Commissioner of Excise, Dharwad District confiscating the vehicle by exercising his authority under Section 43-A of the Karnataka Excise Act, 1965 (referred to as 'the Act, 1965' for brevity), which was confirmed by the Principal District and Sessions Judge, Dharwad (hereinafter referred to as 'the Appellate Court') in Criminal Appeal No.23/2008 vide judgment dated 03.12.2011.

2. Brief facts of the case are that; the mini lorry bearing Registration No.KA-24/3097 was seized by the Sub-Inspector of Police, Rural Police Station, Dharwad, alleging that Raja Whiskey and Raja Rum bottles were being transported in

the mini lorry by using biscuit boxes and there were 48x48 such bottles but, without any pass or permit. The driver of the lorry was apprehended. The lorry along with the contraband was seized under the Seizure Mahazar. Three other persons who were in the lorry managed to run away from the spot. The driver was charged for the offences punishable under Sections 11, 14, 32, 38-A and 43-A of the Act, 1965 by registering Criminal case in Crime No.53/1999. Subsequently, the seized vehicle along with the contraband was produced before the authorized officer as required under the Act, 1965. The authorized officer i.e., the Excise Deputy Commissioner, conducted confiscation proceedings and dropped the proceedings as there were no materials to order confiscation of the vehicle. The prosecution challenged the said order passed by the authorized officer before the Commissioner of Excise, who in turn remanded the matter to the Excise Deputy Commissioner for fresh consideration. Respondent No.2 being the authorized officer held fresh proceedings and vide order dated 07.01.2004 ordered for confiscation of the vehicle in

question, exercising his authority under Section 43-A of the Act, 1965.

3. Being aggrieved by the said order, the revision petitioner has filed Criminal Appeal No.08/2004 before the Appellate Court. The said appeal was allowed vide order dated 12.08.2004, setting aside the order passed by respondent No.2 and the matter was once again remanded for fresh disposal. Thereafter, respondent No.1 passed the order in question, vide order dated 05.12.2007 confirming the order which was passed on 07.01.2004 and confiscating the vehicle in question.

4. Being aggrieved by the said order, the revision petitioner once again preferred the appeal before the appellate Court in Criminal Appeal No.23/2008, seeking to set aside the order passed by the authorized officer. The Appellate Court considering the materials on record dismissed the appeal by confirming the order of the authorized officer and upholding confiscation of the vehicle in question. Thus, the owner of the

vehicle is before this Court seeking to set aside the impugned order of confiscation of the vehicle in question.

5. Heard learned counsel, Sri.Sanket M. Yenagi for Sri.Anand R Kolli for the revision petitioner and learned HCGP Sri.Ramesh B Chigari for respondent-State.

6. Learned counsel for the revision petitioner submitted that the driver who was charged of Commission of the offence under Section 32 of the Act, 1965, is already acquitted by the trial Court. The authorized officer has not conducted any proceedings and the panchas were not examined before the authorized officer. In spite of that, he proceeded to confiscate the vehicle in question without application of mind. It is also stated that the prosecution never proved transportation of the contraband in the mini lorry, which is the prerequisite to confiscate the vehicle under Section 43-A of the Act, 1965. Therefore, he prays for setting aside the impugned order of confiscation by allowing the revision petition.

7. *Per contra*, learned HCGP opposing the submission contended that PWs.1 and 2 were examined before the authorized officer to prove the transportation of contraband and seizure of the same along with the vehicle. After satisfying with the illegal transportation of contraband in the vehicle, the authorized officer confiscated the same by assigning reasons. There are no reasons to interfere with the same and prays for dismissal of the appeal.

8. Perused the materials on record.

9. In view of the rival contentions, the point that would arise for my consideration is;

"Whether the impugned order suffers from illegality and is liable to be set aside?

My answer to the above point is in the negative for the following:

REASONS

On perusal of the material on record, it is found that PWs.1 and 2 were examined before the authorized officer in support of the contention taken by the prosecution that the

contraband was being transported illegally in the vehicle in question. Of course, PW2 appears to have not tendered for cross examination. However, PW1 being the PSI, who seized the vehicle along with the contraband has deposed in detail regarding transportation of the contraband illegally and regarding commission of the offence by the accused-Driver. He also identifies the contraband produced before the authorized officer. Even though this witness is cross examined at length by the learned counsel for the revision petitioner, it is not even suggested to the witness that the vehicle in question was not being used for transportation of contraband. It is also not suggested to this witness that the owner was not aware of transportation of contraband in the vehicle. Under such circumstances, it cannot be said that the revision petitioner has taken up any specific defence on his behalf.

Under Section 43-A of the Act, 1965, the Excise Officer referred to as the authorized officer is authorized to confiscate the seized property, which are produced before him. As per Section 43-B(2), the burden is on the owner of the vehicle to

prove to the satisfaction of the authorized officer that the use of the vehicle in question for illegal transportation of the contraband was without his knowledge. In the present case, the revision petitioner has not made any effort to probabalise the same. In this regard, learned HCGP relied on the decision in the case of ***The Inspector Of Excise, Bangalore Rural District, Bangalore and Another Vs. D Venkatarama Swamy***¹. The Coordinate Bench of this Court while considering similar contention raised by the owner of the vehicle held in paragraphs 3 and 4 as under:

"3. The learned counsel for the respondent in support of the order of the Sessions Judge contended that there is a categorical finding that the respondent has no knowledge of commission of an offence and there is no connivance in committing the offence. The driver of the vehicle was directed to take a marriage party and in violation of the lawful duties entrusted to him, he has carried the contraband liquor in the vehicle in question. Thus, submits that the vehicle is not liable for confiscation under sub-section (2) of Section 43-B of the Karnataka Excise Act. For convenient reference,

¹ 2003 (2) Kar.L. J. 478

sub-section (2) of Section 43-B is extracted hereunder.-

"(2) Without prejudice to the provisions of sub-section (1), no order confiscating any animal, cart, vessel or other conveyance shall be made under Section 43-A, if the owner of the animal, cart, vessel or other conveyance proves to the satisfaction of the authorized officer that it was used in carrying the liquor or intoxicant or the material, still, utensil, implements or apparatus or the receptacle, package or covering without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the animal, cart, vessel or other conveyance and that each of them had taken all reasonable and necessary precautions against such use."

4. A meticulous reading of the provision indicates two conditions, if fulfilled, the vehicle would not be liable for confiscation. The burden is on the owner of the vehicle to prove the said conditions. Firstly, it should be shown that the owner has no connivance and knowledge of the commission of the offence of illegal transportation of contraband liquor. Secondly, the person to whom the vehicle is entrusted by the owner and who is in charge of the vehicle should also exercise a similar measure of diligence and efforts to see that no illegal transportation of the contraband liquor takes place in the vehicle. Despite such diligent steps taken

by the person in charge of the vehicle, if illegal transportation takes place the vehicle would not be liable for confiscation. A close reading of the said conditions would imply that the person in charge of the vehicle if he were to misuse the vehicle for illegal transportation directly by himself or allowing others consciously, the owner become vicariously liable for the acts and he has to suffer the grave consequence of confiscation. In the present case, it is the contention of the respondent-owner, that the driver has misused the vehicle against his instructions. The said excuse is not a ground to exonerate the owner from the consequences of confiscation under sub-section (2) of Section 43-A."

10. In the present case the petitioner has not taken any such defence, nor probablised the same to avoid confiscation. Therefore, I do not find any merit in the contention raised by the revision petitioner in that regard.

11. The next contention raised by the learned counsel for the revision petitioner is that the driver who is arraigned as accused in the trial Court, who is charged for the offence under Section 32 of the Act, 1965, is already acquitted and therefore,

it cannot be held that the vehicle was being used for transportation of the contraband.

12. It is the settled proposition of law that acquittal of the accused before the Criminal Court will not have any bearing in the proceedings initiated under Section 43-A of the Act, 1965. In this regard, learned HCGP placed his reliance on the decision in the case of ***State of Karnataka and Another Vs. M.Haneef and Another***², wherein the Coordinate Bench of this Court considering Section 43-A(2) of the Act, 1965 and also placing reliance on the decision of the Hon'ble Apex Court in ***Divisional Forest Officer and Another Vs. G.V.Sudhakar Rao and Others***³, held in paragraphs 8, 9, 10, 11 and 12 as under:

"8. At this stage, it is necessary to quote a part of the provisions of Section 43-A(2) of the Karnataka Excise Act, which runs as under:

"(2) On production of the seized property under sub-section (1), the Authorised Officer, if satisfied that an offence under this Act has been committed may, whether or not a prosecution is instituted for the

² 2004 (3) Kar. L. J. 432

³ (1985) 4 SCC 573

commission of such offence, order confiscation of such property”.

On a plain reading of the said provision, it is clear that the Authorised Officer is required to be satisfied that an offence under the Karnataka Excise Act had been committed irrespective of the fact whether the prosecution had been instituted against the accused or not. This statutory provision also makes it clear that the Authorised Officer is required to satisfy himself independently. It is a settled principle of law that the Courts of law will have to administer justice strictly in accordance with law and interpret the law keeping in mind the intention of the Legislature and cannot afford to legislate. From the said provision, it is clear that the decision on the part of the Authorised Officer is independent in nature. In other words, it makes it clear that the judgment of acquittal passed by a Criminal Court has no relevance in confiscation proceedings under the provisions of the Karnataka Excise Act.

9. It is also pertinent to mention a judgment of the Apex Court in a decision in the case of Divisional Forest Officer and Another v. G.V.Sudhakar Roa and Others⁴, wherein the Apex Court has held that the prosecution under the provisions of the Karnataka Forest Act and the confiscation proceedings before the

⁴ AIR 1986 Hon'ble Apex Court 328

Authorised Officer under the Karnataka Forest Act are separate and distinct.

10. It is also pertinent to mention that the Karnataka Excise Act also contains a similar provision as that of the Karnataka Forest Act. In view of the facts and circumstances of the cases and the settled law under the provisions of the Karnataka Forest Act and the Karnataka Excise Act, the ratio laid down in the said decision can be pressed into service in this regard.

11. It is also brought to the notice of the Court an unreported decision of this Court rendered on 8-9-2003 in State of Karnataka and Another v Annayya⁵, wherein this Court had also expressed the similar view, while dealing with a case under the provisions of the Karnataka Forest Act.

12. The discussions supra, clearly goes to show that the confiscation proceedings before the Authorised Officer was separate and distinct and as such the judgment of acquittal passed by the Criminal Court will have absolutely no bearing on the confiscation proceedings before the Authorised Officer."

13. Thus, the position of law is very clear on the subject and when the revision petitioner has failed to discharge his

⁵ 2004 (3) Kar.L.J.429

burden of proving that the vehicle was not being used for transportation of liquor or his contention that even if the vehicle was used for transportation of the contraband, the same was not within his knowledge, he cannot succeed in the matter. Therefore, I do not find any merit in the contention raised by the revision petitioner. As a result, revision petition is liable to be dismissed. Accordingly, it is dismissed.

Sd/-
JUDGE

KGK