

CASE NO.:
Appeal (crl.) 1182 of 2003

PETITIONER:
Dy.Comm. of Prohibition & Excise, Nizd., A.P & Anr.

RESPONDENT:
M/s Balaji Cattle Feeds and Anr.

DATE OF JUDGMENT: 31/08/2004

BENCH:
S.N. VARIAVA & ARIJIT PASAYAT

JUDGMENT:
J U D G M E N T

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.

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.

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 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.

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.

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:

"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."

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. 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.

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.

The appeal is allowed.