

**\* HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU**  
**+ WRIT PETITION Nos.10289 and 14386 of 2020**

% **1st September, 2020**

**W.P.No.10289 of 2020**

# Sri G. Madhusudhan Reddy

... Petitioner

AND

\$ The State of Andhra Pradesh rep. by the  
Principal Secretary, Prohibition & Excise  
Department, Secretariat, Amaravati,  
Velagapudi, Guntur District and 2 others.

... Respondents.

**W.P.No.14389 of 2020**

# Karanam Srinivasulu and 4 others.

... Petitioners

AND

\$ The State of Andhra Pradesh rep. by the  
Principal Secretary (Prohibition &  
Excise/Spl.Enforcement Bureau) Department,  
Secretariat, Velagapudi, Guntur District and 3  
others.

... Respondents.

! Counsel for the Petitioners  
Rao

: Sri Gudapati Venkateswara

Sri Prabhala Raja Sekhar

^ Counsel for the 1<sup>st</sup> & 2<sup>nd</sup> respondents : Government Pleader for Proh.  
& Excise

^ Counsel for the 3<sup>rd</sup> & 4<sup>th</sup> respondents : Government Pleader for Home

< Gist:

> Head Note:

? Cases referred:

- 2014 (2) ALD (CrI) 624
- 2004 (2) ALT (CrI.) 386 = LAWS (APH) 2004 2 140
- AIR 1992 SC 604

**HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU**

**WRIT PETITION Nos.10289 and 14386 of 2020**

**COMMON ORDER:**

Both these writ petitions filed under Article 226 are taken up for hearing together with the consent of the learned counsels for the petitioners and the learned Government Pleader for Excise.

The prayer in W.P.No.14386 of 2020 is to declare the action of the 4<sup>th</sup> respondent in registering Crime No.95 of 2020 of Rampachodavaram Police Station, for the offence under Section 34 (A) of the A.P. Excise Amendment Act, 2020 as illegal arbitrary etc.

In W.P.No.10289 of 2020 the prayer is for a mandamus against the action of the 3<sup>rd</sup> respondent in registering the Crime No.423 of 2020 of Jaggaiahpet Police Station for the offence under Section 34 (A) of the A.P. Excise Act as contrary to the G.O.Ms.No.411. Consequential prayers were also made in both these writ petitions.

The sum and substance of the controversy and the issue that is raised in these cases is that as per G.O.Ms.No.411, dated 24.09.2019, a person can carry three bottles of any size of

Indian Made Foreign Liquor (in short “IMFL”). Both the counsel in the writ petitions have questioned the registration of the crimes on the ground that the liquor found was below the said limits and so the registration of the crimes in these cases is contrary to the very same G.O., which is referred to above.

Learned Government Pleader for Prohibition and Excise, who appeared for the State has filed his counter affidavit in W.P.No.10289 of 2020. Therefore, the said matter was taken up for hearing first.

Sri Gudapati Venkateswara Rao, learned counsel appearing for the petitioner in W.P.No.10289 of 2020 has placed reliance on G.O.Ms.No.411, dated 24.09.2019 and argued that the said G.O. is an exception to the general rule and that it stipulates the limits upto which a person can freely carry intoxicants. Since the issue raised in this Writ Petition is about the IMFL, learned counsel points out that at any given point of time, without any permit or license a person can carry three bottles of any size. According to the learned counsel for the petitioner in the vehicle, which was seized, three persons were traveling and therefore the quantity of the liquor (7 bottles of hard liquor and 2 bottles of beer) that they were carrying is far below the stipulated limit. Therefore, the learned counsel argued that the registration of a crime itself was incorrect as the

three people in the car could carry upto 9 bottles of hard liquor and upto 18 bottles of beer. It is his contention that he sought permission for the interstate movement by applying for a car pass and that at that point of time three people were in the car. Therefore, learned counsel argues that the registration of the crime itself is incorrect. Learned counsel also relied upon two judgments reported in **K.Prabhu v State of Andhra Pradesh, Station House Officer, Prohibition and Excise Station, Patancheru** and **K. Venkata Rama Raju v State of Andhra Pradesh** to argue that if the quantity of liquor carried is below the stipulated limit, registration of the crime itself is incorrect. Learned counsel relies upon the landmark judgment of **State of Haryana and others v Ch. Bajanlal and Ors.**, to argue that as the seizure of the alcohol and the registration of the case are not correct, this Court should interfere and pass orders quashing the case. He also argued that for IMFL it is stipulated as three bottles of any size. Therefore, learned counsel argued that once the duty has been paid in a neighboring State when the liquor was purchased the State of Andhra Pradesh cannot impose any further restriction on the possession or movement of the same contrary to the G.O. He points out that this would in fact amount to restriction on the free movement of goods, which is

guaranteed by the Constitution of India. Learned counsel also argued for some time on the payment of duty and a countervailing duty. But later he zeroed in on the essential issue of the permissible limit of carrying liquor. It is his contention that as there are three people in that car the registration of the crime itself is wrong and liable to be quashed.

Sri PrabhalaRajasekhar, learned counsel for the petitioner in W.P.No.14396 of 2020 states that the penal provisions are to be strictly interpreted. According to him a crime can only be said to be committed under Section 34 of the Act when the ingredients are fully present. It is his contention that in view of the G.O.Ms.No.426, dated 11.10.2019, no crime has been committed since the petitioner in that case was only carrying three bottles of IMFL. It is his contention that the law allows him to carry that quantity of liquor. Once the same is legally permitted, learned counsel argued that registration of the crime itself is wrong. He also relies upon the cases that were cited earlier and argues that no crime is committed as the liquor that was being carried was within the permissible limit. He also argued that as per the General Clauses Act the word 'person' includes 'persons' and that therefore even in the other Writ Petition is filed an offence is not committed. Based on these submissions learned counsel argues that this is a fit case to

quash the proceedings.

Learned Government Pleader for Excise on the other hand argues that trade, consumption, movement etc., of the liquor are all subject to reasonable restrictions and that they cannot be treated as a matter of absolute right. It is his contention that a person is entitled to possess of liquor in terms of G.O. referred to above only if the liquor is purchased within the State of Andhra Pradesh. He contends that if the liquor is purchased outside the State of Andhra Pradesh it would amount to “import” of liquor into the State. He states that as per the entry in the relevant list of the Constitution of India, liquor is a State subject and the State has the right to impose restrictions. Learned Government Pleader draws the attention of this Court to the definition of import of liquor contained in Section 2(17) of the AP Excise Act 1968 (hereinafter called the Act) and argues that as per Section 2 (17) (b) of the Act ‘import’ includes the bringing liquor into the State of Andhra Pradesh from outside. He also draws the attention of this Court to Section 9 of the Act which states that no intoxicant shall be imported except under the permit. Learned Government Pleader by drawing the attention of this Court to Section 11 of the Act, which talks of transportation of intoxicants argues that the Government can by notification prohibit or regulate the transport of any intoxicant. Relying

upon Section 12 of the Act, he states that transport of intoxicant can only be regulated under this Section. Therefore, learned Government Pleader for Excise submits that the purchase of alcohol outside the State and bringing it into the State of Andhra Pradesh as well as the transport of the said alcohol within the State of Andhra Pradesh can only be done if a permit is issued under the relevant provisions of the Act. Relying upon Section 21 of the Act, learned Government Pleader states that countervailing duty can also be imposed if such alcohol is brought into the State. He submits that in order to protect the State exchequer from suffering loss the Government is taking steps to curtail the movement and consumption of liquor from outside the State. It is his contention that the Government has the plan to prohibit alcohol altogether. Till then he submits that the Government is taking active steps to curtail the flow of liquor into the State. Apart from the health issues, the learned Government Pleader argues that the exchequer of the State will suffer heavily if cheaper liquor from outside is allowed to come into the State without payment of duty. It is his contention that the purchase, transportation, possession of alcohol / intoxicant, therefore, has to be regulated according to the Act

In the cases on hand, learned Government Pleader argues that both the petitioners have brought in liquor, or rather

‘imported’ it into Andhra Pradesh State without a permit and without the duty been charged on the liquor. Therefore, learned Government Pleader submits that since the excise is the State subject and subject to the restrictions as held by the Hon’ble Supreme Court of India, petitioners do not have a fundamental right to say that they can possess liquor of their choice within the State of Andhra Pradesh.

In W.P.No.10289 of 2020 on facts the learned Government Pleader argues that there are no co-passengers in the car. He draws the attention of this Court to paragraph-5 of the counter affidavit and states that there is only one accused (the petitioner). He states that the petitioner is falsely claiming that there are co-passengers in the car.

He concludes by seeking the dismissal of both the writ petitions.

**COURT:**

All the learned counsels put in a lot of “spirited” effort to argue the matter at length for which this Court is grateful.

The fact that the State has a right to regulate the manufacture, sale, possession, transport etc., of liquor is not in doubt and the law on the subject is sufficiently clear. With the avowed principle of banning consumption of alcohol/intoxicants; earlier Governments have imposed total prohibition which were



again recalled. Statedly efforts are now being made in the State of Andhra Pradesh towards total prohibition and the Government has brought in changes for regulating the sale of liquor etc., in the State of Andhra Pradesh. This is the matter of policy which this Court is not called upon to decide at this stage.

The issue of countervailing duty, loss to state exchequer which was raised is disposed off primarily. The argument of levy of countervailing duty, loss of the state exchequer etc., does not appeal to this Court as no notification to levy the same for these exempted quantities is brought out or highlighted during the hearing. Once the State itself has permitted that three bottles of IMFL of any size can be possessed at any point of time without any permit or license, it does not lie in the mouth of State to now argue that since the liquor was purchased outside the State, permit and the license are necessary or that there will be a loss to the state exchequer etc. As mentioned earlier permit and the licenses are necessary under Section 9 read with 11 and 12 but the State itself while passing G.O.Ms.No.411 has decided and ordered that the person can possess the quantities without a permit or a license. Hence, the arguments made vociferously by the learned Government Pleader on this issue are rejected.

The main fact, however, remains that there is a G.O. which has been issued by the Government of Andhra Pradesh

itself stipulating the maximum amount of liquor that a person can have possession at any given point of time.

The contents of the G.O.Ms.No.411 and the permissible/maximum limits are set out hereunder:

“In exercise of the powers conferred by sub section 1 of Sec 14 of the A.P. Excise Act 1968 and in supersession of the order issued in G.O.Ms.No.274 Revenue (excise) Department dated 21.07.2014 the Government of Andhra Pradesh hereby specify the maximum quantity of intoxicant which a person may have in his possession at a time without a permit or license with effect from 25.09.2019.

- 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.”

The contents of the G.O.Ms.No.411, dated 24.09.2019 which are reproduced above, make it clear that it is issued by the Government under Section 14 of the Act which is extracted hereunder:

“Section 14: Possession of excisable articles in excess of the quantity prescribed:-

- The government may, **by notification**, specify the maximum quantity of intoxicant which a person may have in his possession:  
Provided that different maxima may be specified for different descriptions of kinds of intoxicants.
- No person shall have in his possession any intoxicant **in excess of the quantity** specified under sub-section (1) except under the

authority and in accordance with the terms and conditions of.

- A license for the manufacture, cultivation, collection, sale, buying or supply of such articles, or
- A permit granted by such officer, not below the rank of a Prohibition and Excise Superintendent, as may be prescribed.”

The plain language interpretation of Section 14 of the Act is clear. It states that the State Government may by notification specify the maximum quantity of an intoxicant which a person may have in his possession. It does not draw the distinction between liquor manufactured in Andhra Pradesh and the liquor manufacture outside Andhra Pradesh and on the contrary permits the holding/possession of foreign liquor also which is obviously liquor from outside India itself. Therefore, the contention of the learned Government Pleader that there is a distinction between liquor acquired within the State of Andhra Pradesh or from outside is not really correct as per this Court. Further, in both the judgments referred to by the learned counsels for petitioners, learned single Judges of this Court have quashed the proceedings on the simple ground that the petitioners in those cases were holding liquor well below the stipulated limit. At that point of time in 2004 the petitioner was found in possession of two premier scotch bottles and four regular whisky bottles. It was held that the same was below the

stipulated limit. In 2014 also the petitioner was in possession of 1800 ml., of liquor while he was permitted to carry 4500 ml., the FIR in these both cases were quashed.

Apart from this, the argument of learned Government Pleader, though it appears to be attractive at first blush, however, ignores some very vital aspects.

Section 14 of the Act, which is the source of power for G.O.Ms.No.411 as stated earlier does not make a distinction between liquor purchased outside the State and the liquor purchased in the State. Section 14 (2) of the Act is also important. It states that no person shall have in his possession any intoxicant **in excess of the quantity specified under sub section (1)** except under the authority and in accordance with “(a) license or (b) permit”. Therefore, if a person wishes to possess alcohol / intoxicant exceeding the stipulated quantity he can only possess the same under a license or under a permit. Permit is granted under Section 9 of the Act for import of an intoxicant. If a person wants to import intoxicants beyond the stipulated limit as per Section 14 (1) of the Act he needs the permit. This is clear from a reading of Section 9 read with 14 of the Act. Similarly, if a person wishes to transport intoxicant above the permissible limit he needs a permit under Sections 11 and 12 of the Act. It is clear from a reading of Section 14 read

with Sections 11 and 12 of the Act, that if a person, wishes to transport liquor beyond the stipulated maximum quantity (irrespective of the fact that it is purchased in Andhra Pradesh or outside) he has to possess the permit as mentioned earlier.

Even under Section 34 of the Act an offence is said to have been committed when “a person in contravention of this Act or of any Rule, Notification or Order made, issued or passed thereunder of any license or permit granted or issued under this Act – imports, exports, transports, manufactures, collects or possesses or sells any intoxicant”. Hence, the penalty can only be imposed if in contravention of a rule or a notification or an order a person imports, is in possession of or transports the intoxicant/liquor etc.

A reading of the G.O. on which both the counsel are relied upon states that the said G.O. is issued in exercise of powers under Section 14 (1) of the Act and the Government specified to maximum quantity of intoxicant a person may have in his possession “without a permit or license” with effect from 25.10.2019. These words “**without a permit or license**” cannot be lost sight of and lead to the conclusion that this permitted or stipulated amount of liquor etc., can be possessed at any time without any permission/permit/licence.

A plain simple grammatical interpretation of

G.O.Ms.No.411 read with Section 34 of the Act makes it clear that if a person possesses more than three bottles of IMFL or the other intoxicant as stipulated, then only he would be said to have committed an offence under Section 34 (1) of the Act. A penal provision, like Section 34 (1)(a) of the Act has to be interpreted strictly. This is the settled law and needs no elaboration.

Both on the basis of a strict and also the plain grammatical interpretation, leads this Court to inescapable conclusion which is detailed below.

**CONCLUSION:**

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 supra), 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.

In the second Writ Petition No.10289 of 2020 there is a disputed question of fact about the number of passengers in the vehicle. The State in its counter affidavit has denied that there were three persons in the car. The FIR does not disclose the presence of three people. The same has to be established later. No further opinion is, therefore, being expressed at this stage in this matter.

Writ Petition No.10289 of 2020 is, therefore, dismissed leaving it open to the petitioner to pursue his remedies.

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

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**D.V.S.S.SOMAYAJULU, J**

Date:01.09.2020

Note: LR Copy to be marked.

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