



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3521]

WEDNESDAY, THE EIGHTEENTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE DR JUSTICE Y. LAKSHMANA RAO

CRIMINAL PETITION NO: 1307/2026

Between:

1. JULURI SESHAGIRI RAO, S/O SUBBARAO, AGED 40 YRS R/AT D.NO. 168-1-98/1 TANGELLAMUDI , NEAR THILAK NAGAR, ELURU, WEST GODAVARI DISTRICT.
2. JULURI GANESH, S/O SUBBARAO, AGED 38 YRS R/AT D.NO. 168-1-98/1 TANGELLAMUDI NEAR THILAK NAGAR, ELURU, WEST GODAVARI DISTRICT.

...PETITIONER/ACCUSED(S)

AND

THE STATE OF ANDHRA PRADESH, Through the Sub Inspector of Police , Eluru II Town P.S., Eluru Represented by its Public Prosecutor, High Court at Amaravathi

...RESPONDENT/COMPLAINANT

Counsel for the Petitioner/accused(S):

RAVURI LEELA SAI SAMPATH

Counsel for the Respondent/complainant:

PUBLIC PROSECUTOR

The Court made the following:

ORDER:

The Criminal Petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (for brevity, 'the Cr.P.C.)/Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for brevity, 'the BNSS'), seeking to quash the proceedings against the petitioners/Accused Nos.2 & 3 in C.C.No.213 of 2025 (Crime No.721 of 2021 of Eluru II Town Police Station) on the file of the learned Special Judicial First Class Magistrate-Cum-for Trial of cases under Andhra Pradesh Prohibition and Excise Act, Eluru, registered for the alleged offences punishable under Section 34(a) of the Andhra Pradesh Excise Act, 1968 (for brevity 'the A.P.Excise Act').

2. Heard the learned counsel for the petitioners and the learned Assistant Public Prosecutor.

3. Mr.R.Leela Sai Sampath, learned counsel for the petitioners, submits that as per Rule 2(3) of the Andhra Pradesh Excise (Powers and Duties) Rules, 1972 ('the Rules'), only certain cadres of officers are empowered to exercise powers under Section 52 of 'the A.P. Excise Act'. He submits that N.R.Kishore Babu, Sub-Inspector of Police, had registered the FIR without jurisdiction and that K.Sudhakar Reddy, Sub-Inspector of Police, after completion of investigation, filed the charge sheet.

4. Per contra, Ms. P. Akhila Naidu, learned Assistant Public Prosecutor, submits that there are no merits in the Criminal Petition and urged to dismiss the petition.

5. In the light of the case of the prosecution and the contentions of the learned Counsel for both the sides. Perused the record. Now the point for consideration is:

"Whether the proceedings in C.C.No.213/2025 on the file of the learned Special Judicial First Class Magistrate-Cum-for Trial of cases under Andhra Pradesh Prohibition and Excise Act, Eluru, are liable to be quashed in exercise of the inherent powers of the High Court under Section 482 of 'the Cr.P.C.,'/Section 528 of 'the BNSS'?"

6. As seen from the record, an officer in the cadre of Sub-Inspector of Police registered the case in Crime No.721 of 201 under Section 34(a) of 'the A.P. Excise Act'. Rules 2 and 3 of 'the Rules.,' lay down as under:

Rule-2. Officers authorised to enter and inspect places of manufacture and sale.--

(1) The Deputy Commissioner, the Assistant Commissioner of Excise (Enforcement) the Superintendent for Distilleries, the Assistant Superintendent for Distilleries or any other Excise Officer not below the rank of an Excise Sub-Inspector (under their administrative control) may exercise the powers, under clauses (a) and (c) of Section 52 of the Act and enter and inspect at any time, by day or by night any place in which any licensed manufactures or stores any intoxicant, examine the accounts or registers; and also [examine, test, measure or weigh any materials, stills, utensils, implements, apparatus or intoxicant found in such place.

(2) The Deputy Commissioner, the Assistant Commissioner of Excise (Enforcement) the Excise Superintendent, the Assistant Excise Superintendent or any other Excise Officer not below the rank of an Excise Sub-Inspector having jurisdiction over the place may exercise the powers under clauses (b) and (c) of Section 52 of the Act and enter and inspect any place in which any intoxicant is kept for sale by any person holding a licence under the Act at any time within the hours during which sale is permitted and at any other time during which it may be open and to examine the accounts or registers and

also examine, test, measure or weigh any material or intoxicant found in such place.

(3) Any Officer of the Revenue Department of and above the rank of a Tahsildar and every Police Officer of and above the rank of Deputy Superintendent having jurisdiction over the place, is empowered to exercise the powers under Section 52.

Rule 3. Powers to arrest without warrant, to seize articles liable for confiscation and to make searches.--

(1) Any Excise Officer not below the rank of a Sub-Inspector, any Police Officer of and above the rank of an Inspector and any officer of the Revenue Department of and above the rank of a Deputy Tahsildar having jurisdiction over the place may-

(a) arrest without warrant any person found committing an offence punishable under Sections 4, 35, 36 or 37;

(b) seize and detain any excisable or other article which he has reason to believe to be liable to confiscation under the Act or any other law for the time being in force relating to excise revenue; and-

(c) detain and search any person upon whom and any vessel, raft, vehicle, animal, package, receptacle or covering in or upon which he may have reasonable cause to suspect any such article to be.

(2) The officers of the Government employed in the Revenue Department exercising the power under Section 53 shall, however follow the procedure prescribed in Sections 59 and 60 and make over the case for investigation by an Excise Officer under Sections 57 and 58 and for prosecution under Section 61 of Act.

7. A fair reading of Rules 2 and 3 of 'the Rules,' it can be gleaned that Rule 2 authorizes specified Excise Officers (not below the rank of Excise Sub-Inspector), certain Revenue Officers, and specified Police Officers to enter, inspect, and examine licensed premises dealing with intoxicants under Section 52 of 'the Act'. Rule 3 empowers Excise Officers not below the Police Officers of and above Inspector rank, and Revenue Officers of and above Deputy Tahsildar rank to arrest without warrant, seize liable articles, and conduct searches in respect of specified excise offences. Revenue Officers exercising such powers must follow the prescribed

procedure and hand over the case for investigation and prosecution to the competent Excise Officer under 'the Act'.

8. As per Rule 3, only a Police Officer of and above the rank of Inspector has the power to arrest without warrant, to seize the articles liable for confiscation, and to make searches.

9. A learned Single Judge of this Court in **Juluru Seshagiri Rao v. State of A.P.**,¹ quashed the FIR registered for the offences punishable under Sections 269, 271 and 279 of the IPC and Section 51(b) of the Disaster Management Act, 2005; however, insofar as the offence punishable under Section 34(a) of 'the A.P. Excise Act' is concerned, it was directed that the police were at liberty to continue the investigation and follow the procedure in accordance with law.

10. Another learned Single Judge of this Court in **Kola Sai Teja v. State of A.P.**,² quashed the FIR registered for the offence punishable under Section 34(a) of 'the A.P. Excise Act'.

11. In **K.L. Subbayya v. State of Karnataka**³, it was held that non-compliance with the provisions of Section 54 of 'the A.P. Excise Act', before proceeding to conduct a search and without prior recording of the grounds for belief that an offence under the Act is being committed, renders the

¹Crl.P.No.4374 of 2021, vide order dated 09.05.2023

²Crl.P.No.4803 of 2021 by order dated 04.02.2025

³(1979) 2 SCC 115

entire search without jurisdiction and vitiates the launching of criminal proceedings.

12. In **R.P. Kapur v. State of Punjab**⁴, the Hon'ble Apex Court laid down the following principles for quashing any proceedings:

"(i) Where institution/continuance of criminal proceedings against an accused may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice;
(ii) where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding, e.g. want of sanction;
(iii) where the allegations in the First Information Report or the complaint taken at their face value and accepted in their entirety, do not constitute the offence alleged; and
(iv) where the allegations constitute an offence alleged but there is either no legal evidence adduced or evidence adduced clearly or manifestly fails to prove the charge."

13. Thus, in **R.P. Kapur** *supra* it is held that criminal proceedings may be quashed where their institution or continuance amounts to abuse of process, where a legal bar exists (such as absence of sanction), or where quashing would secure the ends of justice. They may also be quashed where the allegations, even if taken at face value, do not constitute any offence, or where there is no legal evidence, or the evidence manifestly fails to establish the charge.

14. In **State of Haryana v. Bhajan Lal**⁵, the Hon'ble Apex Court considered in detail the powers of High Court under Section 482 and the power of the High Court to quash criminal proceedings or FIR. The Apex

⁴ AIR 1960 SC 866

⁵ 1992 Supp (1) SCC 335

Court summarized the legal position by laying down the following guidelines to be followed by High Courts in exercise of their inherent powers to quash a criminal complaint:

"(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non- cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

15. Thus, in **Bhajan Lal** *supra* it is held that criminal proceedings may be quashed where the FIR or complaint, even if taken at face value, does not disclose any offence, does not reveal a cognizable offence warranting investigation, or the allegations are absurd, inherently improbable, or unsupported by evidence. They may also be quashed where there is a

legal bar to institution or continuance of proceedings, an alternative statutory remedy exists, or the prosecution is manifestly *mala fide* and instituted with ulterior motive.

16. The prejudice test operates as a judicial sieve to discern whether an irregularity or infraction has occasioned a miscarriage of justice of such magnitude as to vitiate the proceeding; it compels the Court to look beyond the mere factum of procedural dereliction and to ascertain whether the accused has suffered demonstrable detriment in the conduct of the defence, the fairness of the trial, or the eventual adjudicatory outcome. Put differently, not every deviation from the *lex fori* is fatal *per se*, only that species of illegality which impinges upon substantive rights, corrodes the integrity of the process, or subverts statutory safeguards will attract curial intervention. The inquiry is thus outcome-relevant and rights-sensitive: the Court tests whether the impugned irregularity is a harmless lapse or whether it has precipitated real and not illusory prejudice, thereby imperilling the ends of justice and warranting annulment.

17. In the case at hand, the investigative enterprise, from search and seizure through to the laying of the charge sheet, was piloted by a Sub-Inspector, an authority structurally incapacitated by Rule 3 of the A.P. Excise Rules, 1972 to exercise such coercive powers, besides the cognizance bar under Section 60 of 'the Act'. This is not a curable lapse but a jurisdictional nullity, striking at the root of competence and rendering the process a legal

cipher. When the investigative foundation itself is erected dehors the statute, the resultant prosecution is intrinsically tainted, the prejudice is presumed and structural, for the accused has been dragged through a process neither sanctioned by law nor overseen by an officer endowed with lawful authority. The prejudice test, accordingly, is satisfied *ex facie*: the breach is not merely technical but one that inheres in the very assumption of power, contaminating all subsequent steps and necessitating the quashment of proceedings to vindicate due process.

18. The Hon'ble Apex Court in **Darbara Singh v. State of Punjab**⁶, at paragraph No. 21 held as under:

"21. "Failure of justice" is an extremely pliable or facile expression, which can be made to fit into any situation in any case. The court must endeavour to find the truth. There would be "failure of justice"; not only by unjust conviction, but also by acquittal of the guilty, as a result of unjust failure to produce requisite evidence. Of course, the rights of the accused have to be kept in mind and also safeguarded, but they should not be overemphasised to the extent of forgetting that the victims also have rights. It has to be shown that the accused has suffered some disability or detriment in respect of the protections available to him under the Indian criminal jurisprudence. "Prejudice" is incapable of being interpreted in its generic sense and applied to criminal jurisprudence. The plea of prejudice has to be in relation to investigation or trial, and not with respect to matters falling outside their scope. Once the accused is able to show that there has been serious prejudice caused to him, with respect to either of these aspects, and that the same has defeated the rights available to him under criminal jurisprudence, then the accused can seek benefit under the orders of the court."

19. The Hon'ble Apex Court in **Rafiq Ahmad v. State of U.P**⁷ at paragraph Nos.35 &36 held as under:

"35. When we speak of prejudice to an accused, it has to be shown that the accused has suffered some disability or detriment in the protections available to him under the Indian criminal jurisprudence. It is also a settled canon of criminal law that this has occasioned the

⁶(2012) 10 SCC 476

⁷(2011) 8 SCC 300

accused with failure of justice. One of the other cardinal principles of criminal justice administration is that the courts should make a close examination to ascertain whether there was really a failure of justice or whether it is only a camouflage, as this expression is perhaps too pliable. With the development of law, Indian courts have accepted the following protections to and rights of the accused during investigation and trial:

(a) The accused has the freedom to maintain silence during investigation as well as before the court. The accused may choose to maintain silence or make complete denial even when his statement under Section 313 of the Code of Criminal Procedure is being recorded, of course, the court would be entitled to draw an inference, including adverse inference, as may be permissible to it in accordance with law;

(b) Right to fair trial;

(c) Presumption of innocence (not guilty);

(d) Prosecution must prove its case beyond reasonable doubt.

36. Prejudice to an accused or failure of justice, thus, has to be examined with reference to these aspects. That alone, probably, is the method to determine with some element of certainty and discernment whether there has been actual failure of justice. "Prejudice" is incapable of being interpreted in its generic sense and applied to criminal jurisprudence. The plea of prejudice has to be in relation to investigation or trial and not matters falling beyond their scope. Once the accused is able to show that there is serious prejudice to either of these aspects and that the same has defeated the rights available to him under the criminal jurisprudence, then the accused can seek benefit under the orders of the court."

20. On careful perusal of the averments of the charge sheet, it is seen that L.W.9, Sub-Inspector of Police, registered the FIR and arrested Accused No.1 and sent him to judicial custody, and Accused No.2 was arrested by way of execution of P.T. Warrant. L.W.10, another Sub-Inspector of Police, conducted further investigation and verified the investigation done by L.W.9. L.W.11 another Sub-Inspector of Police conducted further investigation and verified the investigation done by L.W.10. Eventually, L.W.12, another Sub-Inspector of Police, conducted

further investigation, verified the investigation done by L.Ws.9 to 11, and filed the charge sheet.

21. As per Rule 3 of 'the Rules.,' the power to arrest without warrant, to seize articles liable for confiscation, and to make searches is conferred only on a Police Officer of and above the rank of Inspector. All the Investigating Officers in C.C. No.213 of 2025 are not in the cadre of Inspector of Police; they are all Sub-Inspectors of Police. Rule 3 of 'the Rules.,' is mandatory not directory has to be read strictly. Since the investigation was conducted by officers not competent under 'the Rules.,' the entire proceedings are vitiated. Therefore, the proceedings in C.C.No.213 of 2025 are liable to be quashed.

22. Considering the facts and circumstances of the case, the Criminal Petition is allowed, and the proceedings against the petitioners/Accused Nos.2 and 3 in C.C.No.213 of 2025 (Crime No.721 of 2021 of Eluru II Town Police Station) on the file of the learned Special Judicial First Class Magistrate-Cum-for Trial of cases under Andhra Pradesh Prohibition and Excise Act, Eluru, are hereby quashed.

As a sequel, Miscellaneous petitions, if any pending, shall stand closed.

DR. Y. LAKSHMANA RAO, J

Date: 18.02.2026
RSI

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THE HONOURABLE DR JUSTICE Y. LAKSHMANA RAO

CRIMINAL PETITION NO: 1307 of 2026

Date: 18.02.2026
RSI