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M/S. K.C.P. LTD.

v.

GOVERNMENT OF A.P. & ORS.

(Civil Appeal No. 5020 of 2005)

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AUGUST 12, 2015

[VIKRAMAJIT SEN AND SHIVA KIRTI SINGH, JJ.]

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Andhra Pradesh Rectified Spirits Rules, 1971 – rr.4, 13, 15 – Rules (pertaining to rectified spirit (industrial grade) – Constitutional validity of – Requirement of obtaining a licence and payment of excise duty and pass fee for export of rectified spirit – Challenge to – Held: While State Governments are not competent to impose taxes/levies on industrial alcohol, fee charged for services rendered to prevent the diversion and conversion of industrial alcohol for human consumption is permissible and legal – Such fee need not be charged strictly on quid pro quo basis and it will pass legal muster so long as it is not excessive – Thus, 1971

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impositions partake of a totally different character, transferring it into a tax. A

Synthetics & Chemicals Limited vs. State of U.P.
1989 (1) Suppl. SCR 623: (1990) 1 SCC 109 –
referred to. B

Case Law Reference

1989 (1) Suppl. SCR 623 referred to. Para 4

CIVIL APPELLATE JURISDICTION : Civil Appeal No.
5020 of 2005 C

From the Judgment and Order dated 25.04.2002 of the
High Court of Judicature of Andhra Pradesh at Hyderabad in
Writ Petition No. 10874 of 1996 D

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C. A. Nos. 5021-5022 of 2005

Sanjay Parikh, Challa Guna Ranjan, Y. Rajagopala Rao,
Y. Vismai Rao, Hitender Nath Ratnam, Y. Raja Gopala Rao for
the Appellant. E

Purna Singh, Guntur Prabhakar for the Respondents.

The Judgment of the Court was delivered by F

VIKRAMAJIT SEN, J. 1. The Appellants before us
assail the impugned Judgment of the High Court of Andhra
Pradesh, which had upheld the legality of Andhra Pradesh
Rectified Spirits Rules, 1971 (1971 Rules for brevity) and had
found the requirement of obtaining a licence and the payment
of Excise duty and Pass fee for exporting rectified spirit to be
legal. G

2. The Appellants have distilleries which produce various
grades of industrial alcohol from molasses, also known as ethyl H

A alcohol or ethanol. In exercise of powers conferred under Section 72 of the Andhra Pradesh Excise Act, 1968, the Respondent State enacted the 1971 Rules. Rules 4, 13 and 15 are laid out herein for the facility of reference; although in these Appeals it is Rule 15 which is in focus —

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Rule 4: Rectified spirit shall not be issued from a distillery or a warehouse without pre-payment of **administrative fee** meant for industrial purposes. In case of potable purposes, rectified spirit shall not be issued from a distillery or a warehouse without pre-payment of Excise Duty except when rectified spirit is moved in bound or when payment of Excise Duty has been exempted.

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Rule 13: (1) No person shall be granted license for possession and use of rectified spirit for industrial purposes unless the applicant:

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(a) deposits as **security** for the fulfillment of all the conditions of his license such sum as may be fixed by the Government from time to time which shall not be less than Rs. 15,000 in cash in the Government treasury; and

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(b) executes an agreement in Form R.S.-V for payment of the costs, charges and expenses including salaries and allowances of such Excise staff as may be determined by the Commissioner or his nominee to be posted at the manufactory of the licensee in connection with the supervision to ensure compliance with the provisions of the Act, the rules and terms of the license. The staff shall be under the supervision and control of the Commissioner or the Authorised Officer.

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Rule 15: (1) No rectified spirit shall be exported save under an export permit and in accordance with these rules.

(2) Any person manufacturing or possessing rectified spirit desires to export (herein-after referred to as the exporter) it for the purpose of its exportation to any area outside the State, shall apply in Form ARS-V to the Commissioner for export permit in that behalf. No such application shall be entertained unless rectified spirit is in surplus in the State. The application shall be accompanied by an import permit, or a no objection certificate or an import license issued by a competent authority of the place to which the rectified spirit is to be exported.

(3) (i) on receipt of the application for permit to export, the Commissioner shall make such enquiry as he considers necessary and may grant in accordance with these rules as export permit, on payment of the **export permit fee** of Rupees Ten per bulk litre in Form R.S. VII in triplicate.

(ii) Such permit shall not be granted unless an Indemnity Bond shall be submitted by the Exporter total quantity of Proof litres permitted to export, binding himself severally to pay the **full duty** at Rs. 15-40 per Proof litre on all losses, by way of drainage, short delivery, non-delivery of rectified spirit or otherwise over and above the admissible loss limit of 0.5% towards transit wastage with interest on all losses in transit.

3. The Appellants before the High Court contended that they had previously supplied to the Government a major portion of the rectified spirit which they had produced, which was thereafter used by the latter as raw material for manufacturing potable alcohol and Indian Made Foreign Liquor (IMFL). As a consequence of the imposition of prohibition, this demand within the State of Andhra Pradesh was drastically reduced; and the Appellants were left with no alternative but to export

A the said rectified spirit to other States. However, due to the higher power tariffs, licence fees, duties, etc. in Andhra Pradesh, the Appellants could not compete with the prices of rectified spirit produced in some of the other States, further leaving them with no alternative but to explore the possibility of exporting their said product to other countries. In this factual matrix, the Appellants filed writ petitions before the High Court with the following prayer:

C “For the reasons stated above it is prayed that this Hon’ble Court may be pleased to issue a writ or order or direction declaring the A.P.R.S. Rules, 1971 in so far as they pertain to Rectified Spirit (Industrial Grade) as illegal, ultra vires the Constitution, null and void; (2) declare the action of the respondents in insisting upon the petitioner to obtain licence, pay excise duty and pass fee for exporting Rectified Spirit (Industrial Grade) as illegal, ultra vires, unconstitutional and violative of the petitioner rights guaranteed under Art. 14, 19(1)(g), 265 and 301 of the Constitution of India and consequently issue a writ of Mandamus directing the respondents not to interfere with the export of R.S. by the petitioners and pass such order or orders as this Hon’ble Court deems fit and proper.”

F The major premise of the Appellants is that rectified spirit/ industrial alcohol is outside the purview of the Excise Act; that the State can only legislate with regard to alcohol which is fit for human consumption; and that since rectified spirit is not potable, it is only the Union Government, which is competent to legislate this activity.

G 4. The High Court, upon a detailed examination of the existing case law, found that the State cannot charge Excise duty on alcohol that is not fit for human consumption but it is entitled to charge a fee on a *quid pro quo* basis in case it renders any monitoring service. Upon considering **Synthetics**

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& Chemicals Limited vs. State of U.P. (1990) 1 SCC 109, the High Court held that where rectified spirit is removed or cleared for industrial purposes, the levy of Excise duty and all other controls are to be with the Union, but where the use of rectified spirit is intended for the manufacture of potable alcohol, State Governments are competent to impose any levies. This calls for joint control, supervision and monitoring over the process of manufacture, use and disposal of rectified alcohol, which was in fact being carried out by the Excise Department of the State Government. It was thus well within the powers of the State Government to impose a fee to cover its expenses. The High Court noted that adding water to rectified spirit would make it fit for human consumption, so the responsibility on the State was tremendous and onerous even with regard to liquor meant for industrial purposes. The State Government was held to be entitled to post its staff at distilleries and to levy a reasonable regulatory fee to defray the expenses of such staff. No data was laid down by either party based on which the Court could come to a conclusion on whether the fee levied was reasonable or not. It was held that the amount levied from the Appellants was in the nature of a fee for services rendered, and not by way of tax. The writ petitions were therefore dismissed.

5. The Appellants have now filed these Appeals before us, challenging once again the Constitutional validity of the 1971 Rules insofar as they are applicable to industrial alcohol, and in the alternative, contending that the fee charged does not satisfy the test of *quid pro quo*. We have contemporaneously considered the circumstances in which administrative and service charges can be recovered by a State Government along with the relevant case law in detail in our Judgment of even date in the Appeal titled as State of Tamil Nadu vs. Tvl. South Indian Sugar Mills, and shall therefore not repeat our reasoning herein in interest of avoiding prolixity.

A We merely reiterate that while State Governments are not
competent to impose taxes/levies on industrial alcohol, fee
charged for services rendered to prevent the diversion and
conversion of industrial alcohol for human consumption is
B permissible and legal; such fee need not be charged strictly
on *quid pro quo* basis and it will pass legal muster so long as
it is not excessive. We therefore find that the 1971 Rules
themselves are not illegal, but rather are well within the purview
of the Constitutional powers of the State Government. Rules
C such as the administrative fee postulated in Rule 4 (*supra*) are
essential to defray expenses incurred by State Governments
to prevent the illegal conversion of industrial alcohol to potable
alcohol. The quantum of fee levied has not been challenged
D either before us or before the High Court and no empirical
evidence in this regard is available in the Appeal records. We
shall accordingly desist from commenting on whether the
various heads of fee are excessive, thereby metamorphosing
them from a fee to a tax. The fact that the export permit fee
was reduced from Rs. 10 to Rs. 3 and finally to Re. 1 per bulk
E litre indicates that there has been due application of mind by
the Respondent State in deciding the quantum of fee.

6. In deciding the *vires* of Rule 15, the discussion must
consider the distinguishing features between a fee and a tax.
F An analysis of the Judgments of this Court will reveal that, *inter*
alia, a tax is levied as part of a common exaction, whereas a
fee is payment towards services rendered. Thus a “fee”
ostensibly collected to prevent nefarious activities such as
smuggling and countryside brewing, which have no causal
G connection with the production of industrial alcohol, would thus
metamorphose into a tax. It appears to us that that the State
Government has not undertaken any supervisory activity which
would constitute a *quid pro quo* for the imposition of the “export
permit fee” charged under Rule 15(3)(i). Any expenses incurred
H on such supervisory or administrative activity has perforce

already been recovered or reimbursed from fees on account of storage or sale transactions on industrial alcohol. These dues paid by the Appellants are channelled towards preventing the illegal activities of unrelated third parties for which the Appellants are in no way responsible. It is evident that the intention behind this "fee" is to prevent manufacturers from exporting industrial alcohol to breweries of potable alcohol in other States that would fetch them a better price than producers of other products within their own State. It is thus clearly, in reality, a tax. Rule 15(2), which holds that export will only be allowed if there is a surplus in the State evidences the apprehension of the State Government that it may run short of industrial alcohol. This sub-Rule, as well others such as Rule 15(1) which imposes the requirement of an export permit and Rule 15(3)(ii) which adds the requirement of an indemnity bond, are also outside the jurisdiction and powers of State Governments, as their purpose is clearly not to prevent industrial alcohol from being diverted and converted to potable alcohol; their purpose is to regulate, control and discourage the export of industrial alcohol. The imposition of a tax to regulate export under its own head is entirely feasible, if introduced by the competent authority, i.e. the Union Government as held in **Synthetics & Chemicals Limited**. However, this is not the scenario before us, both for the want of *vires* and for the ambiguity behind the intention of this Rule. The Respondent State has given no explanation to justify this Rule, and has not shown any service rendered in return.

7. We uphold the 1971 Rules and find that the Respondent State had the power to enact these Rules. However, we strike down Rule 15 dealing with the export of rectified spirit, finding that it imposes a tax, not a fee, on the Appellants and is outside the Respondent State's legislative competence. It has not been conclusively shown by the Respondent State that it has been constrained to monitor or

A superintend that industrial alcohol is not illegally diverted to other uses within the State. If industrial alcohol is exported outside the State as industrial alcohol, these impositions partake of a totally different character, transferring it into a tax. These Appeals are disposed of in these terms.

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Nidhi Jain

Appeals disposed of.

[2015] 10 S.C.R. 79

SUNIL KHERGADE

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v.

STATE OF MAHARASHTRA

Criminal Appeal No. 812 of 2008

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AUGUST 13, 2015

[KURIAN JOSEPH AND ADARSH KUMAR GOEL, JJ.]

Penal Code, 1860 – s. 302 r/w s.34 – Murder – Conviction and sentence u/s. 302/34 – Interference with – Quarrel between the parties – Prosecution case that co-accused armed with crowbar, held the deceased and made him lie on the ground and appellant fetched a knife and inflicted fatal injury on the deceased – Trial court convicted the appellant and his younger brother u/s. 302/34 and imposed imprisonment for life – Upheld by High Court – On appeal, held: As regards the submission that in the FIR only one injury was mentioned and with that it cannot be held that appellant committed murder, FIR was prepared on the basis of the statement given by the father of the deceased and what mattered to him was that death resulted from stab injury and not the number of injuries – There is evidence to the effect that deceased was inflicted with three injuries by the appellant and fatal injury was the one which pierced the heart of the deceased – Further, it is established in evidence that deceased and other members of the family were wholly unarmed – Deceased had come to the village only in the morning of the fatal day and the appellant and his younger brother-co-accused both were in possession of arms – Appellant took undue advantage of the situation – Thus, not a fit case to alter the sentence from s. 302 to s. 304 II.

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Patai alias Krishna Kumar v. State of Uttar Pradesh 2010 (3) SCR 1135: (2010) 4 SCC 429;

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- A *Salim Sahab v. State of M.P.* 2006 (10) Suppl. SCR 51: (2007) 1 SCC 699; *Mohd. Ismail alias Haji Abdul Kadar Sheikh v. State of Gujarat* (2007) 3 SCC 118; *Mohd. Shakeel v. State of A.P.* (2007) 3 SCC 119; *Babulal Bhagwan Khandare and another v. State of Maharashtra* 2004 (6) Suppl. SCR 633: (2005) 10 SCC 404 – referred to.
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Case Law Reference

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|---|-------------------------|--------------|---------|
| C | 2010 (3) SCR 1135 | referred to. | Para 9 |
| | 2006 (10) Suppl. SCR 51 | referred to. | Para 10 |
| | (2007) 3 SCC 118 | referred to. | Para 10 |
| D | (2007) 3 SCC 119 | referred to. | Para 10 |
| | 2004 (6) Suppl. SCR 633 | referred to. | Para 10 |

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 812 of 2008

- E From the Judgment and Order dated 22.03.2005 of the High Court of Judicature at Bombay Nagpur Bench at Nagpur in Criminal Appeal No. 284 of 2000

- F Yuvraj B. Gaikwad, Kishor Ram Lambat, S. Rajappa for the Appellant.

Aniruddha Rajput, Nishant Ramakantrao Katneshwarkar for the Respondent.

- G The Judgment of the Court was delivered by

- H **KURIAN, J.:** 1. The appellant along with his younger brother was convicted under Section 302 read with Section 34 of the Indian Penal Code (45 of 1860) (hereinafter referred to as 'IPC') and sentenced to undergo life imprisonment by

the Court of 2nd Additional Sessions Judge, Nagpur. They were also sentenced to pay a fine of Rs.300/- each, a default sentence of two months. . A

2. In appeal before the High Court of Judicature Bombay, Nagpur Bench, the High Court declined to interfere with the conviction and sentence, and hence, the present appeal. B

3. The appellant's younger brother-Sanjay had also filed a Special Leave Petition before this Court as Special Leave Petition (Criminal) No. 7667 of 2007. Since he had not surrendered, as required under the Rules, the Special Leave Petition filed by him was dismissed by Order dated 02.05.2008. C

4. The incident took place on 12.02.1999 between 07.00 A.M. and 08.00 A.M. The deceased had returned to the village only in the morning of that day, around the time of the incident. There was a quarrel between the families who were sharing common open space. The genesis of the quarrel was with regard to the conduct of wife of the deceased who allegedly threw night soil in the open space. They had picked up such quarrel earlier also. It has come in evidence that the co-accused was armed with crowbar and he had held the hands of the deceased and made him lie on the ground, at which time the appellant fetched a knife and inflicted the fatal injury on the left side of the chest. The following are the injuries: D
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"1. Stab wound in left mammary area medial to nipple 2 cm x 1cm x 5" directed upward forward and medially. G

2. Abrasion on chest wall left side above the stab wound 4 x ¼ cm.

3. Incised wound on back left sides 5 cm x ½ cm and akin deep tapering laterally." H

A 5. The trial court mainly relied on the evidence of PW-1-
father of the deceased, PW-2-wife of the deceased and PW-
7-mother of the deceased. There was no evidence for the
defense. In the Statement under Section 313 of The Code of
B as having been caused when the deceased fell on the bamboo
fences amidst the scuffle. However, it was contended before
the trial court that appellant inflicted the injury on the deceased
in exercise of his private defence and the protection under
C Section 97 of IPC was canvassed. That contention was turned
down in view of the overwhelming evidence that the deceased
was wholly unarmed and the other members of the family were
also unarmed. It was then contended that the act of stabbing
was on account of grave and sudden provocation and that the
D act was done without any intention to cause death or to cause
such bodily injury as is likely to cause death and hence
canvassed for the benefit of Section 304 Part II of IPC.

E 6. The trial court, however, having regard to the evidence
of PWs-1, 2 and 7, who were also injured witnesses, and taking
note of the nature and manner of the commission of the crime,
convicted the appellant and his brother under Section 302 read
with Section 34 of IPC. However, on evidence, taking note of
F the young age of the accused and on reaching the conclusion
that it is not a case of rarest of the rare cases, the appellant
was sentenced to suffer imprisonment for life. The trial court
found that accused no.1-Sanjay (younger brother of the
G appellant) had caught hold of the deceased, made him lie on
the ground and the appellant brought knife from the house and
inflicted a stab injury on the chest of the deceased.

7. In appeal, having analysed the evidence at length, the
High Court was not inclined to take a different view.

H 8. Learned Counsel for the appellant mainly stressed for
the conviction to be altered to Section 304 Part II of IPC. Even

otherwise, private defence under Section 97 of IPC and the benefit under exception to Section 300 of IPC will not go together. A

9. It is submitted that there was only one injury that is mentioned in the First Information Report, and with that, it cannot be held that the appellant committed murder. The First Information Report need not necessarily contain each and every particular injury sustained by the deceased. It needs to contain only some information about the crime and some information about the manner in which the offence has been committed. It is not required to contain the minute details of the whole crime. (See Patai alias Krishna Kumar v. State of Uttar Pradesh¹). In the instant case, the First Information Report was prepared on the basis of the statement given by PW-1-father of the deceased. To him, it is not the number of injuries sustained what mattered but the death resulting from the stab injury. It has also come in evidence that the deceased had been inflicted with three injuries by the appellant and the fatal injury is the one which pierced the heart of the deceased. B
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10. Learned Counsel for the appellant, placing reliance on Salim Sahab v. State of M.P.², prayed for alteration of the conviction from Section 302 of IPC to Section 304 Part II of IPC. Reference is also invited to Mohd. Ismail alias Haji Abdul Kadar Sheikh v. State of Gujarat³. Salim Sahab (supra) is a case where the Court, having discussed the factual scenario, came to the conclusion that "... during a quarrel between the deceased and the accused, they were grappling and during that quarrel, the accused attacked the deceased with a pair of scissors. It was not a very big-sized weapon though it was certainly having a sharp-edged point". In that E
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¹ (2010) 4 SCC 429

² (2007) 1 SCC 699

³ (2007) 3 SCC 118

- A view of the matter, the conviction was altered to Section 304 Part-II of IPC. **Mohd. Shakeel v. State of A.P.**⁴ is also one where the conviction is altered from Section 302 of IPC to Section 304 Part II of IPC. It is a case of only one injury and the accused also suffering injury during the scuffle. The situation
- B in the case of the appellant is totally different. It has been established in evidence that the deceased and the other members of the family were wholly unarmed, the deceased had come to his village only in the morning of the fatal day, the appellant and his younger brother, who is the co-accused, both
- C were in possession of arms, the appellant had fetched the knife (Article-15) which had a wooden handle and 17 centimeter long blade portion with which the fatal injury was caused on the left side of the chest of the deceased. It is a situation where
- D the appellant has taken undue advantage of the situation as held by this Court in **Babulal Bhagwan Khandare and another v. State of Maharashtra**⁵. Therefore, it is not a case where the appellant is entitled to alteration of sentence from Section 302 of IPC to Section 304 Part II of IPC.
- E 11. There is no merit in the appeal, hence, it is dismissed.

Nidhi Jain

Appeal dismissed.

⁴ (2007) 3 SCC 119

⁵ (2005) 10 SCC 404