

Court No. - 79

Case :- CRIMINAL REVISION No. - 3088 of 2023

Revisionist :- Raj Kumar

Opposite Party :- State of U.P. and Another

Counsel for Revisionist :- Akhilesh Srivastava, Saksham Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Vipin Chandra Dixit, J.

Heard Sri Akhilesh Srivastava, learned counsel for the revisionist and learned AGA for the State. Perused the record.

This criminal revision has been filed against order dated 28.2.2023 passed by Additional District Magistrate(Finance/Revenue), Hathras in Case No. 801 of 2022(State of U.P. vs. Rakesh Kumar Gupta and others) by which the release application of the revisionist was rejected and the vehicle was confiscated as well as order dated 8.5.2023 passed by Session Judge, Hathras in appeal No. 25 of 2023 by which the criminal appeal preferred by revisionist was dismissed as not maintainable.

Brief facts of the case are that a FIR was lodged on 2.6.2022 under Section 3/7 of Essential Commodities Act, 1955 by opposite party no.2 who is Supply Inspector with the allegation that on the information received from Sub Divisional Magistrate over telephone, the DCM Tanker bearing No. U.P. 82 AT-2688 was detained and 170 quintal rice were recovered from the vehicle. The FIR was lodged against Rakesh Kumar Gupta, Yogesh Kumar and Yashpal with the allegation that they have failed to produce any document regarding ownership of the rice. The vehicle was also detained by the police.

It is submitted by learned counsel for the revisionist that the revisionist is registered owner of the vehicle bearing no. U.P. 82 AT-2688 and papers regarding permit, insurance etc. are valid on the date of detention. The registration certificate and other documents of the vehicle are annexed as annexure 2 to the affidavit filed in support of revision. The release application filed by the revisionist was rejected by the learned ADM(Finance/Revenue) on the ground that rice was being transported by the vehicle without there being any valid papers and the same was used for black marketing. It is further submitted that the revisionist is exclusive owner of the vehicle and there is no dispute regarding ownership of the vehicle. The revisionist has

no concern with the rice which were recovered by the search-party as the vehicle of the revisionist was hired for transportation. The revisionist is not owner of the rice which was alleged to be recovered by the search-party. It is further submitted that the vehicle is detained in police station since 22.5.2022 and more than one and half year have passed, the vehicle is lying in open yard of the police station. Lastly, it is submitted that since the vehicle of the revisionist is lying in an open area in police station, the condition of the vehicle is deteriorating day by day. The revisionist undertakes that he will not sell out the vehicle in question during pendency of trial and will produce the same before the trial court as and when the trial court requires.

Learned counsel for the revisionist has relied on the judgment of Hon'ble the Apex Court in the case of **Sunderbhai Ambalal Desai Vs. State of Gujarat** reported in **2002 LawSuit (SC) 1346**. The relevant paragraph is as under:-

"In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles."

Considering the submissions of learned counsel for the revisionist and on perusal of record, it is evident that the vehicle of revisionist is detained in the Police Station since 22.5.2022 and more than one and half year have passed and there is no possibility of early disposal of trial. The prayer for release of the vehicle is liable to be allowed.

In view of above, the criminal revision is **allowed** and the order dated 28.2.2023 passed by Additional District Magistrate(Finance/Revenue), Hathras in Case No. 801 of 2022(State of U.P. vs. Rakesh Kumar Gupta and others) is hereby quashed to the extent by which the vehicle was confiscated.

Let the vehicle DCM Tanker bearing No. U.P. 82 AT-2688 be released in favour of revisionist on furnishing two heavy sureties as fixed by the trial court with undertaking to the effect that he will not sell out the aforesaid vehicle during the pendency of trial and shall produce the aforesaid vehicle before the trial court, as and when the trial court requires.

Order Date :- 5.12.2023/P.P.