

Court No. - 82

Case :- MATTERS UNDER ARTICLE 227 No. - 7933 of 2023

Petitioner :- Krishna Kumar

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Avdhesh Narayan Tiwari

Counsel for Respondent :- G.A.

Hon'ble Shree Prakash Singh,J.

Affidavit of compliance filed by learned A.G.A. is taken on record.

Heard Sri Avdhesh Narayan Tiwari, learned counsel for the petitioner, Sri H.P. Gupta, learned A.G.A. for the State and perused the record.

Instant petition has been filed with prayer to set aside the order dated 26.6.2023 passed by the Additional District and Sessions Judge/Special Judge (E.C. Act), Jalaun at Orai in Criminal Appeal No.53 of 2022, Krishna Kumar Vs. State of U.P. through D.G.C. Criminal Jalaun at Orai and the Judgment and order dated 23.9.2022 passed by the Additional District Magistrate (Judicial) Jalaun at Orai in Case No.50 of 2019 (State Vs. Krishna Kumar) under Section 6A of U.P. Essential Commodities Act, 1955, P.S. Kuthaund, District Jalaun arising out of Case Crime No.282 of 2017 under Sections 3/7 of the U.P. Essential Commodities Act, 1955, P.S. Kuthaund, District Jalaun.

Learned counsel for the petitioner submits that the petitioner is the registered owner of vehicle, i.e. Loader No. UP-92-T-1600 and due to enmity, the police on the basis of false and concocted story, lodged the First Information Report under Section 3/7 of the U.P. Essential Commodities Act, 1955 and the vehicle was also seized. He next submits that the petitioner was never involved in committing any offence and the Investigating Officer without collecting the material evidence, filed the chargesheet against the petitioner. He further submits that once the petitioner moved an application for release of the aforesaid vehicle, the same was rejected, vide order dated 23.9.2022 with a direction to the petitioner to deposit the equivalent price of the vehicle before the concerned authority within a period of one month, failing which it was also directed that auction proceedings be initiated. He further submits that thereafter the petitioner challenged the same by way of filing an appeal No. 53 of 2022, which was also dismissed and the order passed by the Additional District Magistrate (Judicial), Jalaun at Orai was affirmed. He also submits that the First Information Report was lodged by the police officer due to animosity.

Learned counsel for the petitioner further contended that the Additional District Magistrate (Judicial) has passed the order dated 23.9.2022 without considering the settled proposition of law and has given the perverse finding and the appellate court has also ignored the same and affirmed the order passed by Additional District

Magistrate (Judicial).

In support of his contention, learned counsel for the petitioner has placed reliance upon the judgment rendered in ***Prabhjyot Singh Ajit Singh Oberoi vs. State of Gujarat*** and has referred paragraph 8 of the aforesaid judgement. Paragraph 8 of the judgment is reproduced hereunder:

"8. It would be worthwhile to refer profitably at this stage to the observations made by the Apex Court in R/SCR.A/12084/2022 ORDER DATED: 21/11/2022 'SUNDERBHAI AMBALAL DESAI VS. STATE OF GUJARAT' (Supra), which read as under:

"15. Learned senior counsel Mr. Dholakia, appearing for the State of Gujarat further submitted that at present in the police station premises, number of vehicles are kept unattended and vehicles become junk day by day. It is his contention that appropriate directions should be given to the Magistrates who are dealing with such questions to hand over such vehicles to its owner or to the person from whom the said vehicles are seized by taking appropriate bond and the guarantee for the return of the said vehicles if required by the Court at any point of time.

16. However, the learned counsel appearing for the petitioners submitted that this question of handing over vehicles to the person from whom it is seized or to its true owner is always a matter of litigation and a lot of arguments are advanced by the concerned persons.

17. 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."

Referring the aforesaid, he submits that the Apex Court, vide the above said judgment has reiterated the settled law in the case of ***Sunderbhai Ambalal Desai versus State of Gujarat*** reported in 2003 46 ACC 223 and the case of the present petitioner is squarely covered with the ratio of the judgements aforesaid.

Therefore, the submission is that the orders of Additional District Magistrate (Judicial), as well as the appellate court may be set aside and the authorities may be directed to release the vehicle in favour of the petitioner on submission of the sureties against the vehicle concerned.

Having heard the learned counsel for the parties and after perusal of the material

brought on record, it transpires that an FIR has been lodged against the petitioner under Section 3/7 of the Essential Commodities Act, 1955 and thereafter the chargesheet was filed and as a result thereof the vehicle was seized. Once the petitioner moved an application for release of vehicle, the same was rejected, vide order dated 23.7.2023 and the appeal was also dismissed, while affirming the order dated 23.9.2022.

When this Court examines the aforesaid facts of the case in light of the settled law, it reveals that the vehicle of the petitioner was seized as there was an FIR under Section 3/7 of the Essential Commodities Act, 1955 and the Additional District Magistrate (Judicial) while dealing with the application for release of vehicle directed the petitioner to deposit the amount equivalent to the price of the vehicle in question and that order was affirmed by the appellate court. The settled law in this regard is that once the vehicle is seized in case of involvement in any offence, the same shall be released after taking sureties and guarantee to the satisfaction of the court concerned. The reason behind the aforesaid direction is that seizure of the vehicle could not sub serve any purpose as if the vehicle is kept pending for a long period, the same shall be vanished.

It is trite law, that 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.

In the instant matter, admittedly, the vehicle has been seized after the lodgement of FIR and that is kept at the police station since 24.10.2017 and once the application was moved, the same was rejected by the court concerned without considering the settled law. Resultantly, the impugned orders dated 23.9.2022 and 26.6.2023 are erroneous and are hereby quashed.

The officers concerned are directed to release the vehicle, i.e. Loader No. UP-92-T-1600, in favour of the petitioner after taking an undertaking that the petitioner shall not sell the said vehicle without the permission of the Chief Judicial Magistrate concerned and further the appropriate bond, guarantee and security shall also be fixed in-lieu of release of vehicle.

The petitioner is given an opportunity to move an application for release of the vehicle within a period of 15 days before the authority concerned and if such an application is moved, the same shall be decided within a further period of 30 days, in accordance with the observations made herein above.

The petition is hereby allowed accordingly.

The matter is consigned to record.

Order Date :- 17.11.2023

Faridul