

Court No. - 80

Case :- CRIMINAL MISC. WRIT PETITION No. - 15089 of 2010

Petitioner :- Vimal Kumar Gupta

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Ashok Kumar Srivastava, Suresh Chandra Shukla

Counsel for Respondent :- Govt. Advocate

Hon'ble Subhash Chandra Sharma, J.

Rejoinder affidavit filed by learned counsel for the petitioner is taken on record.

Heard learned counsel for the petitioner as well as learned A.G.A. for the State and perused the material on record.

The present writ petition under Article 226 of the Constitution of India has been moved with following prayers :-

I- To issue a writ, order or direction in the nature of Certiorari quashing the impugned order dated 30.11.2009 passed by respondent No. 1 (District Magistrate) in Case No. 46, Under Section 6-A of Essential Commodities Act as well as the order dated 24.04.2010 passed by Additional District Judge (E.C. Act) in criminal Appeal No. 79 of 2009 (Vimal Kumar Versus State).

II- To issue a writ, order or direction in the nature of Mandamus directing the concerned respondent No. 2 to release the sum of Rs. 66,825/- in favour of petitioner which has been deposited in treasury by selling the contraband sugar on 25.03.2009 seized under the provision of Essential Commodities Act.

(iii) Issue an order direction or writ in the nature of mandamus commanding the respondent No. 2 to pay the petitioner the cost of the sugar at the rate of free sale as shown by him in the cash memo.

It is submitted by learned counsel for the petitioner that in this case, Case Crime No. 166 of 2009 was registered under Section 3/7 of E.C. Act against the petitioner in which 99 bags of sugar was taken into custody by the Supply Inspector from the truck bearing No. UP42A 9726. The recovered sugar was confiscated by the order of District Magistrate on 30.11.2009 under Section 6 A of the E.C. Act. In pursuance to which, the sugar was sold

out and Rs. 66,825/- were deposited in the treasury regarding which request for release was made but it was denied, as a result criminal appeal No. 79 of 2009 before the learned court of Session was preferred which was also dismissed on 24.04.2010 (Vimal Kumar Gupta Vs. State) against which present writ petition was filed before this Court under Article 226 of the Constitution of India. It is also submitted by learned counsel for the petitioner that after investigation no any offence was found to be made out, as a result, final report dated 13.01.2015 bearing No. 2 of 2015 was filed before the learned court concerned and was accepted finally by the learned court by order dated 16.07.2018. Now, the money proceeds of sugar confiscated by the order of District Magistrate as aforesaid are remaining deposited in the treasury. The petitioner is entitled for release of that money in his favour.

It is further submitted that the learned court of Sessions did not consider this fact that no any case was made out against the petitioner but rejected his appeal without considering the material on record, therefore, the orders passed by learned court concerned be set aside and the direction for release of amount be made in his favour.

Learned A.G.A. though opposed the prayer as aforesaid and contended that till the date orders were passed by the learned District Magistrate as well as the learned appellate court those are on 30.11.2009 and 24.04.2010, the investigation was not completed and no final report was filed by the police, therefore, the orders passed by learned courts below cannot be said to be illegal yet now the scenario have been changed that after investigation final report was filed by the police and it was got accepted by the learned Magistrate by order dated 16.07.2018, therefore, he may move fresh application before the learned District Magistrate for release of amount deposited in the treasury as proceeds of the sugar said to be recovered from the possession of the petitioner.

On considering the facts and circumstances of the case, submissions made by learned counsel for the petitioner as well as learned A.G.A., the orders passed by the District Magistrate dated 30.11.2009 as well as the learned Sessions court on 24.04.2010 and the final report as filed by I.O. on 13.01.2015 and also the order passed by the learned Magistrate on 16.07.2018 while accepting the final report there appears no case against the petitioner and the orders passed by the District Magistrate dated 30.11.2009 and by the Session's Judge in criminal appeal on 24.04.2010 has no relevance in the present scenario, but it is expedient to direct the petitioner to move an application before the District Magistrate for release of amount

which was proceed of the sugar said to be recovered from his possession within a period of 30 days with certified copy of this order and thereafter, within 30 days it shall be disposed of finally in accordance with law, if there is no legal impediment.

Accordingly, this writ petition is ***disposed of*** finally.

Order Date :- 16.10.2023

Suraj Srivastav