

Court No. - 4

Case :- MATTERS UNDER ARTICLE 227 No. - 12462 of 2023

Petitioner :- Rahul Gautam

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

Counsel for Petitioner :- Vijay Tripathi, Girish Kumar

Counsel for Respondent :- C.S.C.

Hon'ble Prakash Padia, J.

1. The petitioner has preferred the present petition inter alia with the prayer to set aside the order dated 02.08.2023 passed by the Additional District Judge, Court No.21 Agra in Civil Appeal No.28 of 2021 (Rahul Gautam Vs. State of U.P.).

2. It is argued that the petitioner is owner of vehicle bearing registration No.UP-80-EP-3210. The first information report dated 06.05.2020, registered under Sections-60 and 72 of UP Excise Act and Section 188 I.P.C. at Police Station - Etahmadpur, District - Agra, against one accused person on the basis of recovery of one box of English Vine from the car of the petitioner.

3. In view of the aforesaid, the vehicle of the petitioner was taken into custody by the police authorities. Thereafter, a show cause notice was issued to the petitioner under Section 60/72 of U.P. Excise Act for confiscation of the vehicle. The petitioner has submitted a detailed reply on 30.12.2020 ventilating all the facts and circumstances. Thereafter, the District Magistrate Agra has passed an order dated 05.03.2021 in respect of the alleged recovery. Aggrieved against the aforesaid order, the petitioner has preferred an appeal being Misc. Civil Appeal No. 28 of 2021 (Rahul Gautam vs. State of U.P.). The said appeal was partly allowed and a direction was issued vide order dated 02.08.2023 to the petitioner to pay penalty of Rs. 5,50,000/- in favour of the State government, which is wholly illegal. It is argued by the learned counsel for the petitioner that both the orders passed by the courts below are totally illegal and bad in the eyes of law and they were passed without application of judicial mind. Hence, the petitioner has preferred the present

petition.

4. Learned counsel for the petitioner has placed reliance upon para-17 of the judgment delivered by the Hon'ble Apex Court in SLP (Crl) No. 2745 of 2002; Sunder Bhai Ambalal Desai Vs. State of Gujrat, reported in (2002) 10 SCC 283. Para-17 of the aforesaid judgment reads as follows:-

"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."

5. In this view of the matter, the court is of the opinion that it is of no use to keep the seized vehicle of the petitioner at the police station, hence the District Magistrate, Agra is directed to pass appropriate orders immediately after taking a proper bond, guarantee as well as surety for return of the said vehicle, if required at any point of time.

6. In the facts and circumstances of the case, the present petition is disposed of permitting the petitioner to move an application in this regard before the District Magistrate, Agra and if such application is filed alongwith copy of this order within a period of two weeks from today, the District Magistrate, Agra is directed to pass appropriate orders on the same most expeditiously and positively within a period of ten (10) days from the production of application alongwith this order.

7. With the aforesaid directions, the petition is disposed of.

Order Date :- 13.12.2023

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