

Court No. - 86

Case :- CRIMINAL REVISION No. - 5052 of 2023

Revisionist :- Dhirendra Kumar Patel @ Dhirendra Kumar

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

Counsel for Revisionist :- Devesh Kumar Shukla, Dharmesh Kumar Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Ram Manohar Narayan Mishra, J.

1. Heard learned counsel for the revisionist, learned AGA for the State and perused the record.

2. Instant criminal revision has been preferred against the order dated 18.8.2023 passed by learned Additional District Judge, Allahabad in Civil Appeal No. 11 of 2021 under section 72(7) U.P. Excise Act, 1910 as well as order dated 20.9.2021 passed by the District Magistrate, Allahabad under section 72 of U.P. Excise Act in Case No. 8084 of 2020 arising out of Case Crime No. 48 of 2020, P.S. Saraymamrej, District Allahabad.

3. The factual matrix of the case in brief are that an F.I.R. was lodged on 4.3.2020 at around 8.32 A.M. with the allegation that complainant received an information from the informer that some miscreants were present in a Scorpio Car bearing No. UP 70 EC 6752. It is further alleged that on the information of the informer, the complainant along with his other officials went on the spot and arrested the persons who were present in the alleged vehicle along with the illicit liquor, 13 plastic containers, 105 liter illicit liquor, 700 gram Urea, 500 gram Nausadar. It is also alleged that the aforesaid Scorpio was also seized by the complainant.

4. Learned counsel for the revisionist submitted that vide order dated 3.12.2020, revisionist has already been released on bail in Case Crime No. 48 of 2020 by learned Session Judge, Allahabad. The criminal case is still pending. However, District Magistrate, Prayagraj issued a notice under section 72(2) of Excise Act on 20.11.2020 to the revisionist for submitting reply that as to why the vehicle in question should not be seized. In the said notice, the RTO (Administration), Prayagraj in his report dated 18.9.2020 submitted the market assessment value of the alleged vehicle as Rs. 7,15,000/-.

5. Learned District Magistrate has wrongly observed in the

impugned order dated 20.9.2021 that the opposite party has not opted any option as contemplated under section 72(2) U.P. Excise Act. The revisionist has also submitted a detailed explanation of show cause notice dated 20.11.2020 for release of the alleged vehicle during pendency of the trial but neither District Magistrate nor Appellate Authority has considered the same. It is further submitted that being aggrieved by the order dated 20.9.2021 passed by District Magistrate, Allahabad, the revisionist has also filed a Civil Appeal No. 11 of 2021 before the court concerned but the same was dismissed.

6. It is further submitted by learned counsel for the revisionist that the vehicle is held in police custody for four years and no useful purpose will be served if the vehicle is kept in police station in an unattended manner till conclusion of trial. The revisionist is ready to comply with any directions issued by the trial court or directions of this court in case the prayer for release of the vehicle made by the revisionist is considered. He further submitted that the criminal history of 15 cases have been attributed to the revisionist in counter affidavit wherein revisionist has already been enlarged on bail in all those cases.

7. Learned counsel for the revisionist further submitted that the real fact of the case is that on 4.3.2020, one Dilip who is brother-in-law of the revisionist came to him and requested to provide his Scorpio bearing Registration No. UP70EC 6752 to visit temple of Shita Marhi Dham along with his relatives. After reposing trust upon the words of the said Dilip, the revisionist had given his vehicle to him. The revisionist was not aware that his vehicle was being used by Dilip for the purpose of supplying illicit liquor.

8. Learned AGA vehemently opposed the prayer for releasing the vehicle in favour of the revisionist and submitted that the impugned orders passed by the court below are in accordance with law and no interference is required in present revision.

9. The revisionist has been assigned criminal history of 15 cases in counter affidavit and most of the cases pertains to U.P. Excise Act which shows that revisionist committed the offence repeatedly and he is habitually involved in committing the alleged offence and transporting of the illicit liquor. There is no illegality or irregularity in the impugned orders passed by both the Courts below.

10. The revisionist has not received the show cause notice issued by District Magistrate Prayagraj in proceeding under Section 72

U.P. Excise Act stated that the said Scorpio vehicle U.P. 70 EC 6752 is registered in his name. He has not used said vehicle for any illegal purpose. The local police and excise official had wrongly seized the said vehicle on charge of transporting illegal country made liquor in its explanation regarding violation of said vehicle by ARTO which is assessed as Rs. 9,50,000/-. He possessed all the relevant papers of the vehicle with him. He has not committed any offence by using of said vehicle.

11. Learned appellate court has affirmed the confiscation order passed by learned District Magistrate, Prayagraj vide order dated 20.9.2021 with finding that impugned order passed by the District Magistrate is in accordance with law and need not be set aside. The said vehicle has been seized by police and confiscated by orders of District Magistrate on charge of smuggling/transporting illicit liquor and confiscation order dated 20.9.2021 is in accordance with law. It needs no interference in civil appeal preferred by the owner of the vehicle.

12. Learned counsel for the revisionist placed reliance on pronouncement of Hon'ble Apex Court in ***Sunder Bhai Ambalal Desai Vs. State of Gujarat 2003 (46) A.C.C.223*** wherein Hon'ble Apex Court observed 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 at any point of time. This can be done pending hearing of the applications for return of such vehicles. In case where the vehicle is not claimed by the accused, owner, or the insurance company or by third person, then such vehicle may be ordered to be auctioned by the Court.

13. Learned counsel for the revisionist also placed reliance on an AFR judgment of this court dated 12.02.2021 in Application under Section 482 No.1325 of 2021 ***Chadra Pal Vs. State of U.P. and Another***, wherein it is held in view of law laid down by Apex Court as well as this Court as cited in judgment, Magistrate as well as Revisional Court ought to have decided the issue regarding their own jurisdiction for releasing seized vehicle in exercise of powers under the Code in respect of vehicle which has been seized and confiscation proceedings with regard to which are pending consideration before District Magistrate under Section 72 of Act, 1910. However, the said issue remains unanswered by both the courts below. Thus, the orders impugned in present revision cannot be sustained on account of erroneous reasoning and therefore, liable to be quashed and matter is remitted to concerned Magistrate

to decide release application of the revisionist afresh in the light of observations made herein above within a period of one month.

14. Provisions of Section 72 of the Act is reproduced as follows:-

72. What things are liable to confiscation - (1) Whenever an offence punishable under this Act has been committed-

(a) every [intoxicant] in respect of which such offence has been committed ;

(b) every still, utensil, implement or apparatus and all materials by means of which such offence has been committed;

(c) every [intoxicant] lawfully imported, transported, manufactured, held in possession or sold along with or in addition to any [intoxicant] liable to confiscation under clause (a) ;

(d) every receptacle, package and covering in which any [intoxicant] as aforesaid or any materials, still, utensil, implement or apparatus is or are found, together with the other contents (if any) of such receptacle or package ;

(e) every animal, cart, vessel or other conveyance used in carrying such receptacle or package shall be liable to confiscation.

(2) Where anything or animal is seized under any provision of this Act and the Collector is satisfied for reasons to be recorded that an offence has been committed due to which such thing or animal has become liable to confiscation under sub-section (1), he may order confiscation of such thing or animal whether or not a prosecution for such offence has been instituted :

Provided that in the case of anything (except an intoxicant) or animal referred to in sub-section (1), the owner thereof shall be given an option to pay in lieu of its confiscation such fine as the Collector thinks adequate not exceeding its market value on the date of its seizure.

(3) Where the Collector on receiving report of seizure or on inspection of the seized thing, including any animal, cart, vessel or other conveyance, is of the opinion that any such thing or animal is subject to speedy wear and tear or natural decay or it is otherwise expedient in the public interest so to do, he may order such thing (except an intoxicant) or animal to be sold at the market price by auction or otherwise.

(4) Where any such thing or animal is sold as aforesaid, and -

(a) no order of confiscation is ultimately passed or maintained by the Collector under sub-section (2) or on review under sub-section (6) ; or

(b) an order passed on appeal under sub-section (7) so requires ; or

(c) in the case of a prosecution being instituted for the offence in respect of which the thing or the animal seized, the order of the Court so requires ;

the sale proceeds after deducting the expenses of the sale shall be paid to the person found entitled thereto ;

(5) (a) No order of confiscation under this section shall be made unless the owner thereof or the person from whom it is seized is given -

(i) a notice in writing informing him of the grounds on which such confiscation is proposed ;

(ii) an opportunity of making a representation in writing within such reasonable time as may be specified in the notice ; and

(iii) a reasonable opportunity of being heard in the matter.

(b) Without prejudice to the provisions of clause (a), no order confiscating any animal, cart, vessel, or other conveyance shall be made if the owner thereof proves to the satisfaction of the Collector that it was used in carrying the contraband goods without the knowledge or connivance of the owner, his agent, if any, and the person-in-charge of the animal, cart, vessel or other conveyance and that each of them had taken all reasonable and necessary precautions against such use.

(6) Where on an application in that behalf being made to Collector within one month from any order of confiscation made under sub-section (2), or as the case may be, after issuing notice on his own motion within one month from the order under that sub-section refusing confiscation to the owner of the thing or animal seized or to the person from whose possession it was seized, to show cause why the order should not be reviewed, and after giving him a reasonable opportunity of being heard, the Collector is satisfied that the order suffers from a mistake apparent on the face of the

record including any mistake of law, he may pass such order on review as he thinks fit.

(7) Any person aggrieved by an order of confiscation under sub-section(2) or sub-section (6) may, within one month from the date of the communication to him of such order, appeal to judicial authority as the State Government may appoint in this behalf and the judicial authority shall, after giving an opportunity to the appellant to be heard, pass such order as it may think fit, confirming, modifying or annulling the order appealed against.

(8) Where a prosecution is instituted for the offence in relation to which such confiscation was ordered the thing or animal shall, subject to the provisions of sub-section (4), be disposed of in accordance with the order of the Court.

(9) No order of confiscation made by the Collector under this section shall prevent the infliction of any punishment to which the person affected thereby may be liable under this Act. "

15. On a meticulous analysis of Section 72 of U.P. Act No. IV of 1910, it emerges out that the Collector is empowered to confiscate anything described under Section 72(1) of the Act where the conditions prescribed in sub Section (1)(a) to (e) is satisfied and he has to afford a reasonable opportunity of being heard to the owner of the vehicle after issuing a notice in writing informing him of the grounds on which such confiscation is proposed and an opportunity of making a representation in writing against such proposed confiscation.

16. In present case, confiscation proceedings are not pending and are already decided by competent authority. It is not in dispute that collector is sole authority under the Act to pass an order for confiscation/release of vehicle so seized under the law. In this regard has been stated by Hon'ble Apex Court in Civil Appeal No. 6418 of 2019 ***Mustafa Vs. State of U.P. and Anothers*** reported in SCC online Web edn p.1, wherein Hon'ble Apex Court observed that Section 61 of the Delhi Excise Act, 2009 bars the jurisdiction of all Courts but, even in the absence of similar provisions in the Act, the principle laid down in State(NCT of Delhi) Vs. Narender 2014, is applicable in the present case as the Act is inconsistent with the provisions of the Code. The Court held that Collector has exclusive jurisdiction to confiscate the vehicles and in case the seized things are subject to speedy wear and tear or natural decay, he may order to sell the same in the manner prescribed under sub-section (3) of Section 72 of the Act. Sub- section (4) deals with

distribution of sale proceeds when the seized thing is sold which is subject to wear and tear and natural decay or when it is expedient in public interest to do so. Sub-section (8) of Section 72 of the Act deals with a situation where a prosecution of an offence is instituted in relation to which confiscation was ordered, the thing or animal shall be disposed of subject to the provisions of sub-section (4) of Section 72 of the Act in accordance with the order of the Court. The order of the Court in sub-section (8) of Section 72 of the Act is after conclusion of the prosecution which is different from the seized things which are subject to speedy wear and tear or natural decay as contemplated by sub-section (3) of Section 72 of the Act.

17. On perusal of aforesaid dictum of Hon'ble Apex Court together with the statutory provisions under Section 72 of the Act, it can be held that collector is vested with exclusive jurisdiction to confiscate any such thing like animal cart or other conveyance, if he is of opinion that this is subject to speedy wear and tear or natural decay or it is otherwise expedient in public interest, whether or not prosecution charges has been instituted or concluded while exercising powers of confiscation provided under Section 2 and 3 of the Act. The collector has not to wait for conclusion of trial relating to criminal offence under the Act and while confiscation order, he has to record his satisfaction that the offence under the Act has been committed and the vehicle has been seized by competent official under provisions of the Act after giving opportunity of hearing to the person who claims to be owner of the vehicle.

18. On perusal of Section 72 of the Act, it appears that in Section 72(V)(b) it is provided that *"Without prejudice to the provisions of clause (a), no order confiscating any animal, cart, vessel, or other conveyance shall be made if the owner thereof proves to the satisfaction of the Collector that it was used in carrying the contraband goods without the knowledge or connivance of the owner, his agent, if any, and the person incharge of the animal cart, vessel or other conveyance and that each of them had taken all reasonable and necessary precautions against such use."*

19. Now, it is absolutely clear that once a vehicle is seized in violation of the provisions of U.P. Excise Act by competent police or Excise officer, a heavy burden is lied upon the owner of the vehicle which he has to discharge before the authorities concerned that firstly, he had no knowledge that such an act was being done with said vehicle and secondly, that he applied all the necessary safety and precautions to see that such an Act may not be

committed by the said vehicle.

20. In present case, the revisionist has himself created criminal antecedent of 15 cases in the counter affidavit filed on behalf of the respondent and most of the cases pertain to U.P. Excise Act it shows that revisionist has repeatedly been involved in excise offences on account of excise offence it cannot be inferred that the alleged liquor was being transported by the said vehicle without his knowledge otherwise also he has denied that any exciseable article was recovered from said vehicle.

21. Learned District Judge does not find any infirmity, illegality in appeal preferred against the confiscation order passed by the learned District Magistrate, Allahabad in proceedings under section 72 of U.P. Excise Act. According to F.I.R. version revisionist and his elder brother Arun Kumar Patel were traveling by the Scorpio vehicle which was loaded with illicit liquor. Accused Arun Kumar Patel was arrested by the police on the spot but the driver of the vehicle fled away from the spot and he could not be caught on being chased by police constable due to obstruction caused by standing crops. The arrested person informed the name of escaped person as Dharendra Kumar Patel the present revisionist who is named in the F.I.R. as accused in transportation of illicit liquor by the vehicle. The District Magistrate in impugned order dated 20.9.2021 has given an option to the revisionist to deposit market value of the vehicle Rs. 9,50,000/- as assessed by ARTO if he wants to retain the vehicle but he did not make the offer to retain the vehicle after depositing the said amount, therefore, the District Magistrate had rightly observed in the impugned order that opposite party has not opted any option available to him under section 72(2) U.P. Excise Act. It is also stated in impugned order dated 20.9.2021 on the ground taken in objection filed by the opposite party against show cause notice it is not appropriate to release the vehicle in his favour.

22. It is still open to revisionist to make offer to retain the vehicle by depositing the value of the vehicle as assessed by the ARTO and mention in impugned order passed by District Magistrate if he seeks to make offer in this regard before auction of the vehicle. The District Magistrate will offer an opportunity to retain vehicle after depositing market value of the vehicle as stated above. Thus in the event of deposit of market value of the vehicle by the revisionist, it would be tantamount to payment in lieu of confiscation and the vehicle will be released in his favour.

23. Proviso of Section 72(2) provides that *in the case of anything*

(except an intoxicant) or animal referred to in sub-section (1), the owner thereof shall be given an option to pay in lieu of its confiscation such fine as the Collector thinks adequate, not exceeding its market value on the date of its seizure.

24. In view of the foregoing discussions, I find no illegality, irregularity or perversity in impugned order passed by the District Judge in civil appeal as well as confiscation order passed by learned collector in proceedings under section 72 of U.P.Excise Act. The revision is devoid of merits and deserves to be dismissed.

25. The revision stands dismissed with above observations made in terms of proviso of section 72(2) U.P. Excise Act.

Order Date :- 5.11.2024/SY