

29.1.2021

ks.

Ct. 42, sl.30

CRR 2812 of 2019

Prabhat Kumar Das @ Pravat Kumar Das

vs

State of West Bengal

Mr. Soumyajit Mahapatra

... For Petitioner.

Mr. Saswata Gopal Mukherjee, Ld. PP,

Mr. Arijit Ganguly

... For the State.

The impugned order dated 24th July, 2019, passed by the learned Additional Chief Judicial Magistrate-II, Jhargram in Beliaberah P.S. Case No.86 of 2019 under Sections 379/411 of the Indian Penal Code read with Section 7(I)(a)(2) of the Essential Commodities Act, 1955 declining to return seized vehicle is the subject of challenge in this case.

The learned court below refused to return the seized vehicle holding it to be having no jurisdiction to release the vehicle under the provisions of Essential Act read with commission of offence under the Indian Penal Code. The vehicle seized was found to carry kerosene oil in a pick up van containing 2400 litres kerosene therein, kept in 12 plastic jars, making infraction of the provisions of the law and the control order available under the EC Act. The said seizure of the vehicle was made on 14th July, 2019. Immediately upon detection of the offence, a prayer was made before the learned Magistrate for confiscation on 26th July, 2019.

Learned Advocate for the petitioner submits that till date no confiscation proceeding has been initiated against the petitioner, who is the registered owner of the seized vehicle, issuing notice

for the purpose. It is thus attempted to establish by the petitioner that when petitioner is not in receipt of any notice requiring presence of the petitioner before the appropriate competent authority, responsible for holding the confiscation proceeding, there cannot be any commencement of the confiscation proceeding, and pending which the learned court below has the jurisdiction to return the vehicle under the appropriate provisions contained in the Criminal Procedure Code.

Mr. Mukherjee, learned Public Prosecutor, representing the State submits countering the submission of the petitioner that not only once, but twice notice has been served, and purposefully the petitioner has evaded service of the notice. Besides, issuance of the notice, Mr. Mukherjee has no other document supportive of showing commencement of the confiscation proceeding before the concerned Collector.

The only question thus left to be decided by this court is whether the learned Magistrate of the court below has the authority to return the seized vehicle to the registered owner in a case, where there has been no commencement of the confiscation proceeding, serving notice to the petitioner for the purpose.

It cannot be disputed that by reason of the amendment effected on 9th September, 1986 with the introduction of the Act of 42 of 1986, an express bar has been put in the form of 6E, barring jurisdiction of the court to pass any order regarding disposal of seized vehicle pending confiscation proceeding before the learned Collector of the District.

Learned Advocate for the petitioner in order to derive capital on the issue, now under reference, has referred to a decision reported in 1995 C Cr. LR (Cal) 201 delivered in the case of Smt. Purnima Gupta & Ors. Vs. The State of West Bengal in order to establish that when there has been no confiscation proceeding started as yet, the bar imposed under Section 6E of the Essential Commodities Act will not be applicable.

Reliance is further placed on a decision of a Bombay High Court, reported in 2003(4) Mh.L.J. delivered in the case of Vitthal s/o Pandurang Navle vs. State of Maharashtra, wherein it was decided that merely by informing the Collector even about the seizure of the vehicle, and the registration of the crime therefor, by itself would not tantamount to commencement of the confiscation proceeding in respect of a vehicle under Section 6A of the Essential Commodities Act, 1955.

The contention of the State, as raised in this case, is that service could not be effected, though attempted twice, because of the non-cooperation of the petitioner, who is said to have purposefully refused to accept the notice. There is nothing to show that the petitioner for the reasons best known to him has deliberately refused service of notice. More so, service report of the notice goes un-produced. No reference number or any better particulars has been there to show commencement of the confiscation proceedings before the Collector concerned. In the situation, as it stands, mere issuance of the notice, in the absence of service report of the notice being shown to the best satisfaction of the court, it is very difficult to believe the

commencement of the confiscation proceedings before the Collector concerned. Thus, the contention surfaced over the confiscation proceeding pending before the Collector concerned, is not backed by supportive materials, without which the bar of jurisdiction, contained in 6E of the EC Act, 1955 would not be applied over the facts and circumstances of the case. The prohibition clause of 6E of the Act being qualified by the pendency of confiscation proceeding, mere initiation of a prayer for confiscation by I.O. will not be determinative to show the pendency of confiscation proceeding. It is thus inconsequential at the moment.

Having considered the rival submission of the parties and the materials placed in the record, let there be an order directing return of the seized vehicle to the petitioner being the registered owner of the vehicle, subject to furnishing a bond to the satisfaction of learned Magistrate of the court below, to be appropriately decided by the learned Magistrate of the court below, with conditions that the petitioner will take part in the confiscation proceeding in accordance with the provisions of the law, without transferring his right of ownership over the seized vehicle, or without changing the nature, character and colour of the seized vehicle till the proposed confiscation proceeding is concluded.

The petitioner is further directed to make an application enclosing the copy of this order for the required purpose before the learned Magistrate, and if any such application is filed by the

petitioner, the same shall be disposed of without any delay after having visualised the direction contained in the order.

With this direction and observation, the revisional application stands disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all the formalities.

(Subhasis Dasgupta, J.)