

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.3882 of 2011

Gayadhar Sahu

....

Petitioner

-versus-

State of Orissa

....

Opposite Party

CORAM: JUSTICE S. PUJAHARI

ORDER

27.06.2022

Order
No.

06.

1. This matter is taken up through hybrid mode.
2. Since certified copy of the impugned order has already been filed, the defect, as pointed out by the S.R., be ignored.
3. This application under Section 482 of Cr.P.C. has been filed by the Petitioner with a prayer to quash the order dated 22nd June, 2011 passed by the learned J.M.F.C., Narasinghpur in Misc. Case No.9 of 2009, arising out of 2(a)C.C. No.8 of 2000 (under Annexure-1) and further direct to compensate the Petitioner either by directing to give fresh materials in place the materials (Beer) which was ordered to be released in the aforesaid disposed of case, but subsequently directed to be damaged vide impugned order or in alternative to compensate the value of the materials with a quantified amount for the damage.

4. Heard the learned counsel for the Petitioner and the learned counsel for the State-Opposite Party.

5. As it appears, on 14th April, 2000, 115 cartoons of IMFL, out of which, 55 cartoons of beer bottles each cartoon containing 12 nos. of Haywards 5000 beer bottles, 22 cartoons each containing 12 bottles of Maharani blue label, 33 cartoons each containing 12 bottles of Godfather beer bottles, 5 cartons of Turbo beer bottles each containing 1380 nos. of bottles, was seized from the shop of the present Petitioner, who was a licensee, as if could not be shown to have manufactured by any company in India, a criminal prosecution was launched vide 2(a)C.C. No.8 of 2000 alleged commission of offence under Section 47(a) of the Bihar & Orissa Excise Act. The said stock remained under the custody of Excise Officer after the seizure. On conclusion of the trial in the aforesaid case vide judgment dated 22nd January, 2009 acquitted the accused therein and also directed to release the seized beers in favour of the Petitioner from whom it was seized. The said judgment though reaches its finality including the order of release of the beers, as no appeal was preferred on the same by the Opposite Party-State. In spite of the same, when the order was not carried out, the prayer was made by the Petitioner in this regard for compliance of the said order in the court filing the Misc. Case. The learned J.M.F.C. passed an order in the aforesaid Misc. Case on 11th November, 2010 to return the seized goods to the present Petitioner. However, the same was not complied with. But on 18th

February, 2011, a prayer was made to confiscate the same to the State and on 25th February, 2011, a show cause notice was issued to the I.O., E.I & E.B., Cuttack on the said petition on the prayer of the Petitioner regarding non-return of the article. While the matter remained pending, vide order dated 26th February, 2011, an order was passed by the self-same Magistrate refusing to release the same and directing its destruction, as the I.O. submitted that the articles have already sedimented and its hazardous for human consumption. Challenging the same, the Petitioner has come to this Court.

6. Needless to say that when a court exercising jurisdiction under Cr.P.C. has delivered a judgment in a criminal case or pass a final order, Section 362 of Cr.P.C. prohibits to review or alter of the same by the said court, except to correct a clerical or arithmetical error. A prayer being made by the Petitioner to comply with the said order with regard to disposal of the property, the learned J.M.F.C. directed to release in his favour, learned Magistrate though directed in the aforesaid Misc. Case and also decided to proceed against the official of State-Opposite Party for non-compliance of the order. But, later on passed an order superseding the same, which is not permissible at all in view of the mandate of Section 362 of Cr.P.C. The Opposite Party-State, if was aggrieved of such order for disposal of the property, as an appeal shall lie against the same, could have prefer appeal before the sessions court concerned. The Opposite Party

without resorting to the same, somehow other stall the release of the property and later stage obtained order that the seized beer having sedimented and it is hazardous for human consumption and, as such, the same needs to be disposed of. Learned Magistrate absolutely having no jurisdiction to entertain such a prayer to alter the order or review the same in view of the mandate of Section 362 of Cr.P.C. still passed the order impugned.

7. Be that at it may, since in this case, the article seized are not released in favour of the Petitioner in spite of the order passed and the learned J.M.F.C. taking note of the facts and circumstances as mentioned above, passed the order directing destruction of the article, which was also without jurisdiction, the same is liable to be quashed. But, quashment of such order of the learned Magistrate may not be helpful to the Petitioner, who suffered the loss, as the property is not available to him for being used and has also become valueless in the meanwhile. However, the Petitioner could not be allowed to suffer for such mistake of the court committed at the instance of State-Opposite Party. The same is more so in view of the doctrine *actus curiae neminem gravabit* (an act of court shall prejudice none).

8. Therefore, this Court dispose of this Criminal Misc. Case with a direction to the State-Opposite Party to compensate the petitioner by paying the cost of seized property that was

released in his favour as it had on the date of seizure with 6% interest on the same from the date of such seizure till the date of payment.

9. Needless to say that the Petitioner must furnish a calculation sheet in this regard to the Superintendent of Excise of the District within two months hence with a copy of this order. The Superintendent of Excise of the District on the receipt of the same shall obtain sanction of fund from the appropriate authority to comply with the direction not later than three months of receipt of this order. Failure on the part of the Superintendent of Excise of the District to comply with the same shall expose to the officer concerned who makes such willful default of compliance of this order.

10. A copy of this order also be communicated to the learned Magistrate, who passed the impugned order for his reference and future guidance to make him alive that such order is impermissible.

(S. Pujahari)
Judge

DA