

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No.80 of 2022

Indramani Jena

..... Petitioners

Mr. P.S. Nayak, Advocate

-versus-

State of Odisha

..... Opposite Party

Mr. P.C. Das, A.S.C.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

30.06.2022

Order No.

- 02.
1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
 2. Heard learned counsel for the petitioner as well as learned counsel for the State.
 3. The present revision application has been filed by the petitioner challenging the order dated 28.12.2021 passed by the learned S.D.J.M., Bhadrak in Misc. Case No.399 of 2021 arising out of P.R. No.74 of 2021-22 in the file of O.I.C. Excise, Dhamnagar Excise Station correspond to 2(a) CC No.478 of 2021.
 4. By the impugned order dated 28.12.2021, learned court below has rejected the application of the petitioner under Section 457 of the Cr.P.C. for release of the vehicle, which was involved in the case under Section 52(a) of the Odisha Excise Act.
 5. Learned counsel for the petitioner submits that the petitioner is only owner of the vehicle and he has not been arrayed as an accused

in 2(a) CC No.478 of 2021, which is pending for adjudication before the learned court below. Further, he submits that in view of the settled position of law, the owner of the vehicle should have issued the notice before confiscation proceeding taken up. In the aforesaid context, learned counsel for the petitioner relies upon in the case of ***Srikant Das vrs. State of Odisha*** : reported in (2021) 84 OCR-668.

6. It is further submitted by learned counsel for the petitioner that law laid down of this Court in the case of ***Srikant Das vrs. State of Odisha*** (*supra*) has not been taken into consideration while disposing of the application of the petitioner. It is also submitted that division Bench of this Court had earlier occasion also consider the case of the vehicles, which are standing in the police station without releasing the said vehicles. In addition to this, several High Courts have held that mere initiation of confiscation proceeding cannot act as a bar for delivery of the vehicle to its owner when the owner of the registered vehicle has not been found guilty. The division Bench of this Court had also issued elaborate guidelines in the case of ***Ratnakar Behera vrs. State of Odisha*** : reported in (2020) 80 OCR 607.

7. Learned counsel for the State, on the other hand, submits that the learned court below has not committed any illegality by passing the impugned order as following the procedure and there is no fault found in the impugned order. Further, he submits that the CRLREV is liable to be dismissed.

8. Having heard learned counsel for the parties and careful reading of the impugned order, this Court is of the considered view that the learned court below has not taken into consideration the law laid down by this Court in the aforesaid two judgments and in such

view of the matter, the order dated 28.12.2021 is hereby set aside and the matter remitted back to the court below for fresh adjudication by taking into consideration the law laid down by this Court in the said foresaid judgments, particularly, in the case of ***Srikant Das***(supra) within a period of two months from the date of production of certified copy of this order. It is needless to mention here that the case of the petitioner shall be considered and disposed of by passing a speaking and reasoned order.

9. With the aforesaid observation, the CRLREV stands disposed of.

Urgent certified copy of this order be granted on proper application.

