

A.F.R.

Neutral Citation No. - 2024:AHC:117329

Court No. - 86

Case :- MATTERS UNDER ARTICLE 227 No. - 6929 of 2024

Petitioner :- Pramit

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Mohd. Naushad,Rajiv Sisodia

Counsel for Respondent :- G.A.

Hon'ble Nalin Kumar Srivastava,J.

1. Heard Sri Rajiv Sisodia, learned counsel for the petitioner, learned A.G.A. for the State and perused the record.
2. Criminal Misc. Exemption Application is allowed.
3. The factual matrix of the matter may be summarized in the manner that two persons Pramit and Surendra were intercepted by the police while engaged in transporting 12 bottles of illegal liquor having a wrapper with remark of '*Royal Stag Whisky for sale in Haryana and Delhi*' endorsed upon it in a Ford Ecosport Car bearing registration No. HR 06AH - 2718 on 25.10.2023 at 18:30 P.M. Both the accused persons were arrested and the liquor was seized and sample was taken by the police on spot and memo of recovery and arrest was also prepared and F.I.R. was lodged under Sections 60, 63, 72 of the Uttar Pradesh Excise Act, 1910 (hereinafter referred to as the 'Act').
4. Subsequently an application for release of Car No. HR 06AH - 2718 claiming himself to be the registered owner of the said vehicle was moved by one of the accused Pramit, but the said application was rejected by the Chief Judicial Magistrate, Shamli vide order dated 19.12.2023 in case crime no.591 of 2023 simply on the ground that since the confiscation proceedings are

reported to be pending before the District Magistrate, the Judicial Magistrate has got no jurisdiction to entertain the application for release of the vehicle seized under the provisions of the Excise Act in respect thereof confiscation proceedings are pending before the District Magistrate. The said order was challenged by way of criminal revision no.1 of 2024 before the District Judge, Shamli which on the same analogy was rejected by the revisional court as well vide judgment and order dated 6.4.2024, feeling aggrieved to which the present petition under article 227 of the Constitution of India has been preferred.

5. It is submitted by learned counsel for the petitioner that the impugned orders passed by the learned Chief Judicial Magistrate as well as by the District Judge are bad in law and have been passed without taking into account the correct legal position into the matter.

Another point of argument is that the release application was rejected by the Chief Judicial Magistrate, Shamli solely on the ground that since confiscation proceedings are going on before the District Magistrate, the case property could not be released under Section 72 of the Act and the said view was legally not sustainable.

It has been further urged by the learned counsel for the petitioner that the aforesaid wrong legal notion was affirmed by the District & Sessions Judge in criminal revision no.1 of 2024 and the impugned order passed by the learned Magistrate was upheld and the revision was dismissed.

Another limb of argument is that the legal position in this regard is very explicit according to which even if the confiscation proceedings are going on before the District Magistrate in a case

under the Act, the release of property cannot be refused on this ground alone. The petitioner before the Court is the registered owner of the vehicle in question and the Magistrate was fully empowered to pass an order for release of the said vehicle under Section 457 of the Code of Criminal Procedure.

Reliance has been placed by the learned counsel for the petitioner upon the decisions of the Single Bench of this Court rendered in **Chandra Pal Vs. State of U.P. and Another (Application u/s 482 No. - 1325 of 2021) decided on 12.2.2021** and **Vikas Kumar Vs. State of U.P and Another (Application u/s 482 No. - 33012 of 2019) decided on 22.1.2020** by a learned Single Judge of this Court.

6. Per contra, learned A.G.A. vehemently opposed the prayer made in the petition. It has been urged that in the facts and circumstances of the present case, the Magistrate was seized of his power to release the vehicle in question under Section 457 Cr.P.C. In support of his contention, he has placed reliance on the following decisions rendered by the coordinate Benches of this Court -

(i) Virendra Gupta Vs. State of U.P., 2019 (6) ADJ 432 (D.B.)

(ii) Jaikawar Vs. State of U.P. and Another (Application u/s 482 No. - 9961 of 2021) decided on 4.10.2021

(iii) Akhilesh Kumar Vs. State of U.P. and Another (Application u/s 482 No. - 20096 of 2021) decided on 4.3.2022

7. The provisions of Article 227 of the Constitution of India under which the present petition has been filed, are extracted below -

“227. Power of superintendence over all courts by the High Court --(1) Every High Court shall have superintendence over all courts and tribunals throughout the territories interrelation to which it exercises jurisdiction.

(2) Without prejudice to the generality of the foregoing provisions, the High Court may--

(a) call for returns from such courts;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practising therein: Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision or any law for the time being in force, and shall require the previous approval of the Governor.

(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces.”

8. In order to adjudge the validity of the impugned orders, to cast a fleeting glance over the provisions of Section 72 of the Act would be appropriate which are extracted as below.

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

(a) every [intoxicant]² 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]² lawfully imported, transported, manufactured, held in possession or sold along with or in addition to any [intoxicant]² liable to confiscation under clause

(a) ;

(d) every receptacle, package and covering in which any [intoxicant]² 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; and

(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.”

9. Section 72 of the Act stipulates that whenever an offence punishable under the Act has been committed then every thing or article seized in respect of which such offence has been committed, Section 72 of the Act empowers the Collector to

confiscate the articles enumerated therein which are in any manner connected with any offence punishable under the Act.

10. The sole question involved in this matter is whether the Judicial Magistrate has got any jurisdiction to deal with the matter in respect of the release of a vehicle seized under the provisions of the Act while in connection thereof, confiscation proceedings are pending before the District Magistrate.

11. The issue involved in this matter has been a debatable point in the legal circle for long, but the controversy has now been set at rest by the Division Bench judgment of this Court passed in *Virendra Gupta (supra)*.

12. Before referring to the judgment of the Division Bench in *Virendra Gupta (supra)* it would be appropriate to discuss the law promulgated in *Chandra Pal (supra)* and *Vikas Kumar (supra)* decided on 12.2.2021 and 22.1.2020 respectively, relied upon by the learned counsel for the petitioner.

13. In *Chandra Pal (supra)* it was found that on challenge of the order of the Magistrate refusing to release the vehicle seized under the provisions of the Excise Act, the revisional court in a criminal revision filed against the said order of the Magistrate concluded that since proceedings under section 72 of the Act are pending, no directions can be issued for the release of the vehicle in question. The learned Single Judge observed that albeit the release application was rejected by the Magistrate and the criminal revision filed against the said rejection order was also dismissed by the revisional court but both the courts declined to decide the issue regarding their own jurisdiction for releasing the vehicle in exercise of powers under the Code in respect of the vehicle which has been seized and confiscation proceedings in

respect of which are pending consideration before the District Magistrate under section 72 of the Act and since the said issue remains unanswered by both the subordinate courts and their orders were silent on the point of their own jurisdiction, the application under section 482 Cr.P.C. was allowed and the matter was remitted to the Magistrate to decide the release application afresh in the light of the observations made in the judgment aforesaid.

14. In *Vikas Kumar (supra)*, the learned Single Judge of this Court while referring to **Sunderbhai Ambalal Desai, AIR 2003 SC 638, Nand Vs. State of U.P., 1996 Law Suit (All) 423, Jai Prakash Vs. State of U.P., 1992 AWC 1744 and Kamaljeet Singh Vs. State of U.P. 1986 U.P. Cri. Ruling 50 (Alld)** opined that in the matter of release of a vehicle, the Magistrate Court should follow the procedure as contemplated under section 457 Cr.P.C. promptly. In the said case also, the application for release of the vehicle seized under the provisions of the Act in respect of which confiscation proceedings were pending before the District Magistrate under section 72 of the Act was rejected. The application u/s 482 Cr.P.C. was allowed and the Magistrate concerned was directed to decide the release application afresh in the light of the observations made in the body of the said judgment.

15. Since the *Chandra Pal (supra)* case deals with another aspect of the matter which is not a subject matter of the instant petition, it offers no assistance to the case of the petitioner.

16. In *Jaikawar (supra)* and *Akhilesh Kumar (supra)*, the issue involved was identical and the same and it was explicitly held in both the judgments that during confiscation proceedings pending

in respect of a vehicle involved under the provisions of the Excise Act, the Magistrate has no power under Sections 451 and 457 Cr.P.C. to release the said vehicle and a Division Bench judgment of this Court in **Virendra Gupta Vs. State of U.P., 2019 (6) ADJ 432** was relied upon in both the judgments in support of the conclusion arrived at therein.

17. In **Virendra Gupta Vs. State of U.P., 2018 105 AllCriC 518**, learned Single Judge of this Court while referring to the discordant views expressed by the learned Single Judges of this Court in several decisions over the subject, found it appropriate to refer the matter to the larger Bench to set the controversy at rest and the following question was found to be arisen for consideration by the Court which was as hereunder:

"Whether pending confiscation proceedings under Section 72 of the U.P. Excise Act before the Collector, the Magistrate/ Court has jurisdiction to release any property subject matter of confiscation proceedings, in the exercise of powers under Sections 451, 452 or 457 of the Code of Criminal Procedure?"

18. On reference, the matter was dealt with by the Division Bench of this Court in **Virendra Gupta (supra)** wherein various laws on the subject were taken into consideration such as **Sunderbhai Ambalal Desai vs. State of Gujarat, 2002 (10) SCC 283**, **Nand vs. State of U.P., 1997 (1) AWC 41**, **Rajiv Kumar Singh vs. State of U.P. and others, 2017 (5) ADJ 351**, **Ved Prakash vs. State of U.P., 1982 AWC 167 All, (G.N.C.T. of Delhi) vs. Narender, (2014) 13 SCC 100**, **General Insurance Counsel and others Vs. State of Andhra Pradesh and others, Muntazir Vs. State of U.P. and Another, Dilip Sinh Ram Sinh Solanki Vs. State of Gujarat and Mustafa and Another Vs. State**

of U.P. and Another and the Division Bench expatiated upon the correct legal position to be kept in mind by the Magistrate at the time of dealing with the issue of release of any thing seized under the provisions of the Act and in connection of which confiscation proceedings are going on before the Collector under section 72 of the Act and it was concluded by the Division Bench of this Court as follows :

"Section 72 of the 'Act' which is admittedly a local act does not contain any provision for release of anything seized or detained in connection with an offence committed under the Act in respect of which confiscation proceedings are pending. In fact the sub-section (1) to sub-section (4) of Section 72 of the 'Act' prescribe the manner in which anything seized in connection with an offence committed under the 'Act' and in respect of which confiscation proceedings u/s 72 of the 'Act' are pending, shall be dealt with. Section 72 of the 'Act' does not contain any provision indicating that such seized property may be released by the Magistrate in the exercise of his power u/s 457 Cr.P.C. The provisions contained in sub-sections (1) to (4) of Section 72 of the 'Act', clearly denudes the Magistrate of his power to pass any order u/s 457 Cr.P.C. for release of anything seized in connection with an offence purporting to have been committed under the 'Act'.

In view of the foregoing discussion, we find that the case of Ved Prakash (supra) lays down the correct law on the subject matter of this reference and neither *Nand vs. State of U.P.*, 1997 (1) AWC 41 or *Rajiv Kumar Singh vs. State of U.P. and others*, 2017 (5) ADJ 351 nor *Sunderbhai Ambalal Desai vs. State of Gujarat*, 2002 (10) SCC 283 can be said to be authorities on the power of

the Magistrate to release anything seized or detained in connection with an offence committed under the 'Act' in respect of which confiscation proceedings u/s 72 of the U.P. Excise Act are pending before the Collector."

19. The Division Bench got an opportunity to examine the various aspects of the matter pertaining to the release of a vehicle to which provisions of Sections 451 and 457 Cr.P.C. were applicable and Sunderbhai Ambalal Desai (supra) case was distinguished on the point that the Hon'ble Supreme Court in the said case had neither any occasion to examine the effect of section 72 of the Act on the power of a Magistrate to release seized properties in view of the section 5 of the Code of Criminal Procedure nor any direction in respect of the vehicle seized under any special enactment was specifically given by the Hon'ble Supreme Court. Further, the law laid down by the Single Bench of this Court in Ved Prakash (supra) explaining the power of the Magistrate to release the vehicle seized under the provisions of the Excise Act in respect of which confiscation proceedings are going on was held as a good and correct law on the subject by the Division Bench.

20. To refer the view taken in Ved Prakash (supra) which was marked as a correct law on the subject shall be advantageous and relevant at this juncture. The legal principle which was enumerated in Ved Prakash (supra) is that the Magistrate is denuded of his jurisdiction to release anything under section 457 Cr.P.C. seized in connection with a criminal case in respect of which confiscation proceedings under section 72 of the Act are pending.

21. Hence, in view of the decision of the Division Bench of this Court in Virendra Gupta (supra) wherein the reference made in Virendra Gupta (referred by learned Single Judge of this Court) (supra) was answered as mentioned here-in-above. The controversy sets at rest and it can safely be held that if a vehicle is seized under the provisions of the Excise Act and confiscation proceedings in respect thereof are going on before the Collector, a Judicial Magistrate has got no jurisdiction to release the aforesaid vehicle. Needless to say that even if the petitioner before the Court is the registered owner of the vehicle, this fact does not offer any certificate regarding his entitlement to move an application for release of such vehicle before the Court of a Judicial Magistrate who is denuded of his jurisdiction in such matters as the jurisdiction is an ornament of the Court which cannot be imposed or created and it is inherited in a particular Court.

22. **Mustafa Vs. State of Uttar Pradesh & Ors. decided by the Hon'ble Supreme Court in Civil Appeal No.6438 of 2019 (arising out of SLP (Civil) No.11110 of 2018) on 20.8.2019** is another authority on the subject of this petition wherein legal position as enumerated by the Division Bench of this Court in Virendra Gupta (supra) has been reiterated and it was so concluded:

"30) After examining the provisions of the Act, we hold that the 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.

31) In view of the above, we do not find any error in the order passed by the High Court which may warrant interference in the present appeal. Since the High Court has decided the matter only on the question of jurisdiction of the Collector to order confiscation, the matter is remitted back to the High Court to exercise power of judicial review over the order of confiscation passed by the Collector and as affirmed by the District Judge. The appeal is disposed of accordingly."

23. In view of the above settled legal position, the decision made in *Vikas Kumar (supra)* and relied upon by the learned counsel for the petitioner is also not helpful to him in any manner in the issue involved in the case in hand.

24. In the impugned order dated 19.12.2023 passed by the Chief Judicial Magistrate, Shamli, reliance has been placed over the decision of this Court in *Virendra Gupta Vs. State of U.P. (D.B.) (Criminal Revision No.2177 of 2018, order dated 26.4.2019)* and on the basis thereof it was held that if the confiscation proceedings under Section 72 of the Excise Act are pending, the seized property under the said Act cannot be released by the Magistrate in exercise of its power under Section 457 Cr.P.C. and the power to release such property to be exercised by the Magistrate is barred under the provisions of Sub-section (1) of Section 72 of the Excise Act.

25. In the impugned order dated 6.4.2024 passed by the learned District Judge, Shamli, reliance has been placed upon *Mustafa (supra)* passed by the Hon'ble Supreme Court and the judgment passed by Division Bench of this Court in *Virendra*

Gupta (supra) and relying upon the aforesaid decisions, the criminal revision was dismissed by the learned District Judge, Shamli by the impugned order dated 6.4.2024.

26. The aforesaid discussion brings the Court to the conclusion that if confiscation proceedings are going on before the Collector in respect of release of a vehicle seized under the provisions of U.P. Excise Act, 1910, the Judicial Magistrate has got no jurisdiction to release the same and this conclusion is drawn on the basis of the law promulgated by Hon'ble Supreme Court in Mustafa (supra) and this Court in Virendra Gupta (Ald.) (D.B.) (supra) which is authoritative law on the subject.

27. Hence, both orders dated 19.12.2023 passed by the Chief Judicial Magistrate, Shamli and dated 6.4.2024 passed by the District Judge, Shamli, in my considered opinion are having no perversity or legal lacuna and need no interference or direction to be issued by this Court in the instant Petition. The Petition under article 227 of the Constitution of India has no force and is liable to be dismissed and is accordingly dismissed.

Order Date :- 5.7.2024

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