

A.F.R.
Judgment Reserved On: 16.02.2022
Judgment Delivered On: 04.03.2022

Court No. 91 WWW.LIVELAW.IN
Case :- APPLICATION U/S 482 No. - 20096 of 2021

Applicant :- Akhilesh Kumar
Opposite Party :- State of U.P. and Another
Counsel for Applicant :- Sunil Kumar Yadav
Counsel for Opposite Party :- G.A.

Hon'ble Syed Aftab Husain Rizvi,J.

1. This criminal misc. application under section 482 Cr.P.C. is filed challenging the order dated 16.04.2021 passed by Chief Judicial Magistrate, Mainpuri and order dated 02.09.2021 passed by Sessions Judge, Mainpuri in criminal revision no.28 of 2021 (*Akhilesh Kumar vs. State of U.P.*) in crime no.165 of 2021 under Sections 60/72 Excise Act and Section 272, 420 IPC, P.S. Kotwali, District Mainpuri.
2. In brief the facts are that an FIR crime no.165 of 2021 was lodged on 16.03.2021. According to prosecution case on 16.03.2021, the police party on information received from informer, intercepted 3 four wheelers and on search recovered 200 ltrs adulterated illicit liquor contained in five jerrycans and seized two vehicles Mahindra Marazzo, Registration No. UP 84 CA 5621 and a Toyota Qualis bearing no. UP83 AR 4994. The police also arrested seven persons who are named in the FIR. The applicant moved an application before the Chief Judicial Magistrate, Mainpuri for release of vehicle No. UP 84 CA 5621 Mahindra Marazzo, on the ground that he is the registered owner of the vehicle. On 15.03.021 his driver has took away the vehicle in marriage of his relative. The police seized the vehicle from the house of the driver and implicated it in this case. This release application was dismissed by the Chief Judicial Magistrate, Mainpuri by the impugned order dated 16.04.2021. Aggrieved with it, the applicant preferred criminal revision no.28 of 2021 which has also been dismissed by the Sessions Judge, Mainpuri vide impugned judgment and order dated 02.09.2021.

3. Learned counsel for the applicant submitted that applicant is the owner of the vehicle and GPS system clearly shows that the vehicle in question was not present at the spot as told by the prosecution. The applicant has filed release application during pendency of the confiscation proceedings. The vehicle is standing in the open space and there is chance of natural decay. The vehicle is a court property and court has power to release it in favour of the registered owner during pendency of the trial. The property is mechanical in nature and if it remain unused and not taken due care, it may become useless. It is also contended that no offence under section 60/72 Excise Act and Sections 272 & 420 IPC is made out. The impugned orders passed by the Chief Judicial Magistrate, Mainpuri and Sessions Judge, Mainpuri are wholly illegal and bad in the eyes of law. Learned counsel also contended that the learned Magistrate has rejected the application on the ground that he has no jurisdiction as confiscation proceeding is pending. The view taken by the learned Magistrate is erroneous. The revisional court has adopted the same view and relying on the citation of ***State (NCT) of Delhi. vs. Narendra 2014 (13) SCC 100*** and ***Mustafa vs. State of U.P. Civil Appeal No.6438 of 2019 (arising out of SLP (Civil) No.1111 of 2018)*** and ***Virendra Gupta vs. State of U.P. 2019 (6) ADJ 432*** Division Bench Allahabad High Court has dismissed the revision also. Both the courts below have misinterpreted the aforesaid citations and have failed to apply the correct law. The jurisdiction of the Magistrate is not barred. Learned counsel placed reliance on the case of ***Murad Ali vs State of U.P. decided on 23.11.2021 in application U/s 482 Cr.P.C. No.21547 of 2021 and the case of Chandra Pal vs. State of U.P., application U/s 482 Cr.P.C No.1325 of 2021 decided on 12.02.2021.***

4. Learned A.G.A. contended that the vehicle is involved in a crime under Excise Act. Police has seized the vehicle and has reported the seizure to the District Magistrate. Confiscation proceeding is pending and the learned Magistrate has rightly held that as the confiscation proceeding is pending, the Magistrate has no jurisdiction with regard to release. Learned revisional court has also upheld it. There is no illegality or infirmity in the impugned orders.

5. It is undisputed that vehicle Mahindra Marazzo registration no.UP 84 CA 5621 has been seized by the police in crime no.165 of 2021 under section 60/72 of U.P. Excise Act and Section 272, 420 IPC. The confiscation proceedings has been initiated. Revisionist is the registered owner of the vehicle and he moved release application before the concerned Magistrate during confiscation proceeding. Learned Magistrate rejected the aforesaid application on the ground that during pendency of the confiscation proceedings under section 72 of U.P. Excise Act, the Magistrate has no power to release the vehicle. The revisional court also upheld it.

6. Now the question is whether during confiscation proceedings under section 72 of U.P. Excise Act, the Magistrate is empowered to release the vehicle. In case of **(Nand vs. State of U.P.) 1997 (1) AWC 41** and **(Rajeev Kumar Singh vs. State of U.P. and ors) 2017 (5) ADJ 351**, the learned Single Judge of this Court held that the Magistrate has jurisdiction while in the case of **Ved Prakash vs. State of U.P. 1982 AWC 167** another Bench of this Court held that the Magistrate has no jurisdiction in the matter. The matter again came before another learned Single Judge of this Court and taking notice of the conflicting views the learned Single Judge referred the matter to Division Bench. The Division Bench in **(Virendra Gupta vs. State of U.P). 2019 (6) ADJ 432 (DB)**, on the aforesaid reference formulated the following question:

“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 exercise of powers under Sections 451, 452 or 457 of the Code of Criminal Procedure?”

7. The Division Bench interpreting the various provisions of Cr.P.C. and U.P. Excise Act and the law laid down by the Apex Court in **(Sunderbhai Ambalal Desai vs. State of Gujarat), 2002 (10) SCC 283** and **(State GNCJ of Delhi) vs. Narendra (2014) 13 SCC 100** answered the aforesaid question in para no.20 of the judgment which is reproduced as below:

“ 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 under Section 72 of the U.P. Excise Act are pending before the Collector.”

8. So the law has been settled by the Division Bench of this Court which has held that during confiscation proceeding, the Magistrate has no power under sections 451 or 457 Cr.P.C. to release the vehicle.

9. Learned counsel for the revisionist has placed reliance on the case of **Chandra Pal vs. State of U.P.** in Application U/s 482 Cr.P.C. No.1325 of 2021 decided on 21.02.2021 and **Murad Ali vs. State of U.P. and two ors** in Application U/s 482 Cr.P.C. No.21547 of 2021 decided on 23.11.2021. In the aforesaid case, the learned Single Judge has held that Magistrate has jurisdiction to release the vehicle during confiscation proceedings but in view of the law propounded by the Division Bench of Allahabad High Court this view cannot be adopted.

10. From the aforesaid discussion, it is clear that during confiscation proceedings, the Magistrate has no jurisdiction to release the vehicle seized under section 72 of U.P. Excise Act. The findings recorded by the learned Magistrate and upheld by the revisional court are according to law. There is no illegality or infirmity in the impugned order and the application U/s 482 Cr.P.C. is liable to be dismissed.

11. According the application U/s 482 Cr.P.C. is hereby **dismissed**.

Order Date :- 04.03.2022

C. MANI