

Court No. - 80

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Case :- APPLICATION U/S 482 No. - 28477 of 2021

Applicant :- Yashpal

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Raghvendra

Counsel for Opposite Party :- G.A.

Hon'ble Sanjay Kumar Singh, J.

1. Heard learned counsel for the applicant, learned AGA for opposite party no. 1 and perused the record.
2. The instant application under Section 482 Cr.P.C. has been preferred by the applicant to quash the order dated 08.10.2021 passed by Judicial Magistrate, Court No. 2, Mainpuri whereby an application for release of Vehicle No. UP-84-AH-0198 of the applicant has been rejected mainly on the ground that Vehicle No. UP-84-AH-0198 of the applicant which was seized in Case Crime No. 144 of 2021, under Section 60 Excise Act, Police Station Ghiror, District Mainpuri has been confiscated by the order of District Magistrate in favour of the State, therefore, application under Section 457 Cr.P.C. for release of the said vehicle by the applicant is not maintainable.
3. Learned counsel for the applicant submits that aforesaid vehicle of the applicant is lying in police station and in case, the same is not released in favour of the applicant, the condition of the vehicle will be deteriorated, therefore, no useful purpose would be served in keeping the said vehicle in the police station.
4. Learned AGA submits that in view of the alternative remedy available under the U.P. Excise Act, 1910 for filing civil appeal against the order of confiscation of vehicle, the instant application is not maintainable and there is no illegality in the impugned order dated 08.10.2021.
5. Having examined the matter in its entirety, it is relevant to mention that clause (e) of sub-Section (1) of Section 72 of U.P. Excise Act, 1910 provides that whenever an offence is punishable under this Act, every animal, cart, vessel or other conveyance used in carrying such receptacle or package shall be liable to confiscation. The power of confiscation of vehicle has been given to the Collector of the District and sub-section 7 of Section 72 provides appeal against the order of confiscation under sub-section 2 or sub-section 6 of Section 72 to the Judicial Authority as the Government may appoint.
6. Sub-section 7 of Section 72 of U.P. Excise Act, 1910 is being reproduced as under:-

"(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."

7. It is noteworthy that for the purpose of section 72(7) of U.P. Excise Act vide Notification No.4986 (E)/XIII-517 dated June 4th, 1978 of आबकारी अनुभाग, appellate judicial authority appointed by the State Government is "**District Judge**" and an appeal should be regarded as Civil Appeal (not Criminal) and is required to be decided by the District Judge himself.

8. In view of the above, there is no dispute that as per provisions of Section 72(7) of U.P. Excise Act, 1910, against the order of confiscation passed by the District Magistrate, Civil Appeal would lie before the District Judge of the respective District.

9. Having heard learned counsel for the parties, I find that learned counsel for the applicant does not dispute the aforesaid fact that vehicle in question has already been confiscated by the District Magistrate and the applicant has not challenged the order of confiscation before the Appellate Court.

10. Accordingly, the instant application is not liable to be entertained on account of having alternative statutory remedy available to the applicant as mentioned above.

11. The application lacks merit and is accordingly dismissed.

12. However, it is open for the applicant to file civil appeal as per the provisions of U.P. Excise Act, 1910 before the competent Civil Courts, the District Judge, Mainpuri subject to law of limitation.

Order Date :- 3.3.2022

Shubham