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Court : Madhya Pradesh

Decided On : Mar-14-2014

Judge : Sujoy Paul

Appeal No. : Writ Petition No. 988 of 2014

Appellant : Chanda Sharma

Respondent : State of Madhya Pradesh and Another

Advocate for Pet/Ap. : Shri. Amit Lahoti

Judgement :

1. This petition filed under Article 226 of the Constitution, is directed against the order of Collector dated 24.12.2013, whereby the application for grant of interim Supurdigi of vehicle of the petitioner is rejected.

2. The facts as projected by the petitioner are that the police has registered a case involving the vehicle bearing registration No.MP31/CA/0273. As per the prosecution case, the vehicle was being driven by one Leeladhar Sharma. Some amount of liquor was found in the said vehicle and, therefore, vide Crime No.128/2013 FIR is registered for the offence under Sections 27/25 Arms Act and Section 34 of Excise Act.

3. Since the vehicle is registered in the name of the petitioner and confiscation proceedings are initiated under the Excise Act by respondent No.2, the petitioner

preferred an application for release of aforesaid vehicle, Annexure P-2. Along with the said application, an application for providing interim Supurdigi of the vehicle is also filed (Annexure P/3).

4. By the impugned order, the Collector has rejected the said application.

5. Shri Amit Lahoti, learned counsel for the petitioner relied on AIR 2003 SC 638 (Sunderbhai Ambalal Desai v. State of Gujarat) and 2001 (2) MPHT 21 (CG) (Smt. Indrani Shrivastava vs. State of Chhattisgarh and another) to submit that the order of Collector is bad in law and no useful purpose would be served to keep the vehicle with the police. The vehicle will be damaged and keeping the vehicle in custody runs contrary to the law laid down by Supreme Court in Sunderbhai (supra).

6. The prayer is opposed by Smt. Sangita Pachauri, learned Deputy Government Advocate.

7. I have heard learned counsel for the parties and perused the record.

8. The Collector has rejected the application of the petitioner on the ground that the documents filed in the case prima facie do not establish that a wrong or frivolous case is lodged by the police/ Execise Authorities. On this ground, the application is rejected.

9. In the considered opinion of this Court, the point involved in this case is no more res integra. In Sunderbhai (supra) the Apex Court has considered the question of grant of custody of vehicle, valuable articles, currency notes etc. In paras 15 to 17, the Apex Court opined as under:-

15. Learned Senior Counsel Mr. Dholakiya, appearing for the State of Gujarat submitted that at present in the police station premises, number of vehicles are kept unattended and vehicles become junk day by day. It is his contention that appropriate directions should be given to the Magistrates who are dealing with such questions to hand over such vehicles to its owner or to the person from whom the said vehicles are seized by taking appropriate bond and the guarantee for the return of the said vehicles if required by the Court at any point of time.

16. However, the learned counsel appearing for the petitioners submitted that this question of handling over of vehicles to the person from whom it is seized or to its true owner is always a matter of litigation and a lot of arguments are advanced by the concerned persons.

17. in our view, whatever be the situation, it is of no use to keep such seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles.

10. Chhattisgarh High Court in Indrani Shrivastava (supra) directed for release of the vehicle on payment of bank guarantee. However, para 17 of the judgment of Sunderbhai (supra) makes it clear that it is for the Magistrate to pass appropriate orders in this regard.

11. Considering the judgment of Supreme Court, I deem it proper to set aside the impugned order and remand the matter before the Collector to reconsider and pass appropriate orders in accordance with law by taking into account the judgment of Sunderbhai (supra). The order impugned is set aside because it is based on irrelevant considerations. A bare perusal of the judgment of Sunderbhai (supra) makes it clear that the basic consideration for releasing the vehicle is not the question as to whether a prima facie case by the prosecution is made out or not. The considerations are different which are enumerated therein.

12. Resultantly, the impugned order, Annexure P-1, is set aside. The respondent No.2 is directed to rehear the parties and pass fresh orders in accordance with law based on relevant considerations expeditiously. It will be lawful for the respondent No.2 to rehear and decide afresh within 15 days from the date of production of copy of this order.

13. Petition is disposed of.

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