

Virendra Kumar Rai Vs. State of U.P.

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Court : Allahabad

Decided On : Sep-24-1997

Reported in : 1998(1)AWC191

Judge : P.K. Jain, J.

Acts : [Uttar Pradesh Excise Act, 1910](#) - Sections 60 and 72; ; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 451

Appeal No. : Crminal Revision No. 888 of 1997

Appellant : Virendra Kumar Rai

Respondent : State of U.P.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : V.S. Singh, Adv.

Judgement :

P.K. Jain, J.

1. Heard Sri V. S. Singh. learned counsel for the revisionist and the learned A. G-A.
2. This revision is being finally disposed of at the admission stage.

3. On 4.9.86 Police of Sadar Bazar, Jhansi intercepted Ambassador Car No. MP-06W-0230 from which 25 wooden boxes of English liquor were recovered which were being transported unauthorizedly. A case under Section 60 of the Excise Act was registered. "The present revisionist claiming to be the registered owner of the said vehicle prayed for release of the said vehicle. Application for release was rejected. Simultaneously the District Magistrate, Jhansi on the report of S.O., P.S., Sadar Bazar, Jhansi initiated proceeding under Section 72 for confiscation of the vehicle. The revisionist on notice being issued to him filed his objection stating that he is owner of the vehicle. He had come to Jhansi from Gwalior to meet his brother-in-law. The vehicle went out of order and was left at the house of the brother-in-law. On 5.9.96 he read in Newspaper that the vehicle was seized by the police for transporting contraband liquor. The vehicle was not used by him for transporting the liquor. A plea also appears to have been taken that he has no knowledge of the vehicle being used for the said offence nor it was used with his connivance.

4. In support of his objection, the revisionist examined some witnesses. The learned District Magistrate after going through the evidence overruled the objection and directed that the vehicle shall be confiscated till the case pending against the accused persons under Section 60 of the Excise Act is finally disposed of. He also directed that till further orders, the vehicle shall remain In custody of Police Station, Sadar Bazar, Jhansi.

5. Appeal was filed against this order before the Sessions Judge, Jhansi and the same was finally disposed of by Vth Addl. Sessions Judge, Jhansi vide judgment and order dated 11.6.97. The appellate court dismissed the appeal.

6. By the present revision, the revisionist has challenged the order of the learned District Magistrate temporarily confiscating the vehicle as also the order of the appellate court.

7. There are two submissions of the learned counsel for the revisionist, First is that the order of temporary confiscation till the disposal of parent case under Section 60 of the Excise Act indicates that the learned District Magistrate was not satisfied that it was a fit case in which confiscation could be made and secondly that there

was no evidence on record to show that the vehicle was used in commission of the crime with the knowledge or connivance of the revisionist. In these circumstances, the vehicle could not have been confiscated. Learned A.G.A. contends that the revisionist's evidence has been disbelieved on sufficient grounds and the order of the learned District Magistrate was justified.

8. There is no provision under the Excise Act authorising the District Magistrate to confiscate the vehicle temporarily. An order for confiscation is passed on satisfaction of the District Magistrate that the vehicle was used in the commission of the crime under the Excise Act and the person to whom the vehicle belongs, had either actively participated in the offence or the vehicle was used with his connivance or with his consent or he had knowledge about such use of the vehicle and had thus indirectly consented to such use. The revisionist has taken the plea that he is not at all concerned with the commission of the crime. He had absolutely no knowledge about the vehicle being used in the commission of the crime. He had also taken the plea that the offence was not committed with his connivance. The Learned Magistrate did not give any specific finding in this regard. He simply discussed the evidence adduced by the revisionist in support of his plea that the vehicle was left by him with his brother-in-law for getting it repaired. Even if, that evidence is disbelieved, still the vehicle can be confiscated only when the District Magistrate finds that the vehicle was used in the commission of the crime with the consent or in the circumstances amounting to consent or knowledge of the owner. It is not clear if the investigating agency collected any evidence in this regard and if the revisionist has been charge-sheeted for commission of the crime. In any case, in the absence of any specific finding in this regard, the order of confiscation could not be passed. It appears that some decided cases were cited before the learned District Magistrate who did not follow the observations made therein on the ground that these cases related to release of the vehicle under Section 451, Cr. P.C. The basic principle for release as well as for confiscation was remain the same otherwise, injustice may be caused in cases where a person's vehicle is stolen and thereafter used in commission of the crime or where a person bonafidely gives his vehicle on hire to other person and that person without knowledge of the owner uses the same for transporting contraband goods. In the absence of any evidence that the vehicle was used in commission of the crime

with the consent of the revisionist or with his knowledge amounting to implied consent, the confiscation order cannot be sustained. As already pointed out above the learned District Magistrate passed temporary confiscation order which is not provided by law. This indicates that the learned District Magistrate was himself not satisfied if the vehicle in the circumstances of the case can be confiscated or not.

9. I am of the considered opinion that the impugned orders dated 6.2.97 passed by the District Magistrate, Jhansi and dated 11.6.97 passed by the Addl. Sessions Judge, Jhansi cannot be sustained. The revision is, therefore, allowed. The impugned orders are set aside. As regards the question of release of the vehicle, the revisionist may approach the trial court under relevant provisions of law.

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