

State of U.P. Vs. Mala Singh

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Court : Allahabad

Decided On : Dec-14-1989

Reported in : 1990CriLJ1474

Judge : D.P.S. Chauhan, J.

Acts : [Uttar Pradesh Excise Act, 1910](#) - Sections 72 and 73; Code of Criminal Procedure (CrPC) , 1974 - Sections 397, 397(1) and 397(2)

Appeal No. : Criminal Revn. No. 68 of 1982

Appellant : State of U.P.

Respondent : Mala Singh

Advocate for Def. : S.D.N. Singh and ;M.L. Jaiswal, Advs.

Advocate for Pet/Ap. : Shivaji Misra, A.G.A.

Judgement :

ORDER

D.P.S. Chauhan, J.

1. State has come up to, this Court by way of this revision application impeaching the order dated 29-9-1981 passed by the Sessions Judge, Allahabad, in Criminal Appeal No. 15 of 1981 whereby he directed for the release of Truck No. UTD

4288, in favour of the opposite party, Mala Singh, on furnishing a personal bond to the tune of Rs. 10,000.00 together with one surety of like amount with an undertaking to produce the truck in question as and when required for the purpose of criminal trial.

2. At the outset, the learned counsellor the opposite party, raised a preliminary objection regarding the maintainability of the revision on a plea of it being an interlocutory order, against which in view of the provisions of Sub-section (2) of Section 397, Cr.P.C, no revision is maintainable. It is devoid of merit as the order of confiscation passed under Section 72 of the U.P. Excise Act, 1910, (hereinafter referred to as 'the Act') is an appellable order and any order passed disposing finally a regular appeal, which was statutorily provided, cannot be termed as an interlocutory order. The language of Section 397(2), Cr. P.C. which reads as under, also do not carry to the conclusion that the impugned order is interlocutory.

'397(2) The power of revision conferred by Sub-section (1) shall not be exercised in relation to an interlocutory order passed in any appeal, inquiry or trial or other proceedings.'

By the impugned order, the appeal as a whole has been disposed of, for the purposes of Sub-section (2), an order can be interlocutory only when either the appeal in which the order passed or inquiry of trial or order proceedings are pending. In the present case, neither the appeal itself is pending nor the proceedings for confiscation under the Act are pending. The impugned order, thus, cannot be termed as an interlocutory order and the provisions of Sub-section (2) of Section 397 have no application in the present case. The preliminary objection is overruled.

3. Learned Additional Public Prosecutor made two fold submissions, firstly that the impeached order is illegal. The owner of the truck is vicariously liable for the acts of his servant and the court below has acted illegally in holding that at this stage it also cannot be said whether the owner of the truck residing at Lucknow knew about the fact of loading of Bhang on his truck without a valid permit as the liability of the owner was vicarious; secondly, that the court below has acted without jurisdiction in directing for the release of the truck which was found being loaded

with illicit contraband material regarding which there existed no valid licence, in the face of the mandatory requirement of confiscation. S. 72(5)(b) of the Act reads as under:--

'72(5)(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 incharge of the animal, cart, vessel or other conveyance and that each of them had taken all reasonable and necessary precautions against such use.'

Accordingly, it was for the owner to establish the user of the truck for loading contraband Bhang without a valid permit by the driver was without his knowledge or connivance and he took all reasonable and necessary precautions against such use.

4. The owner of the truck, in reply to a show-cause notice, stated that he gave a clear instructions to the driver that he should carry only lawful goods and give due observance to the rules. He also stated that at the time the' Bhang in question was loaded in truck, he was not present there. He took all the precautions being the owner of the truck and cannot be made liable for the wrongful acts of the driver wherewith he had no connection. He further stated that he had no concern with the consignee Satish Chandra Jaiswal who got the Bhang in question loaded in the truck at Bahraich on the basis of some permit from the Excise Department. The District Magistrate, in his order, did not deal with these objections, but stated that the opposite party was not given any certificate that the truck business was carried independently without his knowledge. It was also said in the order that it cannot be believed that after purchasing the truck, the entire responsibility of the business is entrusted to the driver. It was said that the provisions of S. 73 of the Act make it clear that the vehicle can be confiscated and on this basis the order of confiscation was passed.

5. The appellate court on the basis of the material on record recorded the finding that it appears that Bhang was loaded on the truck from Bahraich on forged

permits issued on the pro forma of the Excise Department and at this stage it cannot be said with any amount of precision if the truck driver had knowledge that Bhang was being loaded without valid permit and that it cannot also be said whether the owner of the truck, residing at Lucknow, knew about it.

6. There is a report of the Excise Inspector dated 30-7-1981 on record wherein it has been said that on prima facie examination the permit has been found to be fake and further investigation is in progress. The knowledge of the driver and of its owner regarding loading of contraband Bhang on the truck without a valid permit cannot be inferred only on the basis that the truck was loaded with huge quantity of Bhang and Bhang alone. There was no question of inference of knowledge of the owner of the truck or the driver that the Bhang was contra-band and the same were loaded on the basis of the permit unless the falsity of it was known to them. There seems to be no such material.

7. The submissions so advanced by the learned Public Prosecutor have no substance as the finding of facts and conclusions arrived at by the court below are based on material on record of the case and there has been no failure of justice.

8. I find no error in the order of the appellate court directing for the release of the truck so to exercise the supervisory jurisdiction Under Section 397, Cr. P.C. The objection of the learned counsel for the applicant regarding vicarious liability does not come into picture at present as Bhang was loaded on the basis of permit which was not established to be false to the knowledge of the owner or the driver.

9. Revision application, accordingly, lacks merit and is rejected. The interim order dated 2-3-1982 is discharged. The record of the case may be transmitted at the earliest.