

Prem Nath Arora Vs. State

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Court : Allahabad

Decided On : Sep-12-1996

Reported in : 1997CriLJ573

Judge : C.A. Rahim, J.

Acts : [Uttar Pradesh Excise Act, 1910](#) - Sections 60, 72, 72(1) and 72(5); Code of Criminal Procedure (CrPC) , 1974 - Sections 452

Appeal No. : Criminal Revision No. 1888 of 1982

Appellant : Prem Nath Arora

Respondent : State

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : Kiran Kumar Arora, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

C.A. Rahim, J.

1. This revision has been preferred against the judgment and order of the learned Additional Sessions Judge, Dehradun dated 29-6-82 dismissing Criminal Appeal

No. 179 of 1981 preferred by the applicant-revisionist. The said appeal was preferred against the judgment and order of the Judicial Magistrate, Dehradun dated 20-10-1981 in which the accused applicant was acquitted. The seized properties namely, car, and contraband articles were confiscated.

2. The prosecution case, in short, is that on 30-3-1979 the Excise Inspector along with other persons on duty stopped one Ambassador Car No. USK 6970 at about 4 A.M. One Sardar was driving the car, he left the car and ran away. On search four boxes and one gunny bag having Aristocrat Whisky bottles of different sizes were recovered. Charge-sheet was submitted and trial was held. The learned Munsif Magistrate, Dehradun acquitted the accused on the ground that they were not found in possession of the recovered contraband articles. While passing the judgment it was ordered that the contraband whiskies would be disposed of according to law after the appeal period is over. He has also cancelled the superdaganama of the said car executed by one Smt. Modi Arora wife of the applicant. While passing the judgment he made observation that the concerned authority may start proceeding under Section 72 of the U.P. Excise Act if they so desire and in that case they may issue further order of confiscation of the said property. Learned counsel has submitted that confiscation of the property covered under the Excise Act can be made under Section 72 of the U.P. Excise Act wherein it has been provided that such confiscation proceeding shall start when an offence punishable under this section has been committed. He has submitted that since the appellant has been acquitted no confiscation proceeding can be started under the provisions of Section 72 of the U.P. Excise Act 1910.

3. The said matter was taken up and considered by the learned appellate court who held that since the appellant did not claim the properties during trial those articles cannot be returned to him. In this connection learned counsel has referred the case of Sri Narain v. State of U.P. 1987 ACC 421, but the said case does not seem to be applicable as because in that case no notice under Section 72(5) of the U.P. Excise Act was issued to the aggrieved party in the Confiscation proceeding.

4. Disposal of the property after conclusion of the trial has been provided in Section 452 Cr.P.C. wherein it has been stated that after conclusion of the trial the Court may make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise to any property or document regarding which an offence appears to have been committed. In this case during trial the applicant contended that he was not found within the car at the time of seizure, for which he was acquitted. The said plea taken by the applicant during trial disentitled him to claim the seized properties as per provisions of Section 452 Cr.P.C. because the delivery of the property after the disposal of the case should be made to any person claiming to be entitled to the possession. He has filed application for the return of the properties taking up the plea that the said car along with the articles were stolen. The learned appellate Court has taken the view that 'the revisionist nowhere has stated that he was the owner of the case property but has stated that a theft took place from his godown. The Court was not going to presume that it was the same whisky which was stolen from the godown of the revisionist who was supposed to establish that the said property belonged to him.

5. I do not subscribe that the said finding is either illegal or improper. It might be that a theft took place wherefrom the properties were stolen but it was the duty of the revisionist to prove that the properties which were seized by the excise people were those properties, in the absence of which the revisionist cannot claim for the return of the said property even when he was acquitted from the said charge.

6. Now with regard to the order passed by the learned Magistrate referring the matter for confiscation under Section 72 of U.P. Excise Act learned counsel has referred the case of Ved Prakash v. State of U.P. 1982 All Cr R 127 : 1982 UPLT (NOC) 52 and submitted that the trial magistrate should have passed an order with regard to the disposal of the property and should not have referred it for confiscation under Section 72 of the U.P. Excise Act as the same is not permissible. In that decision it has been held:

There can be yet another situation in which the order of the Magistrate will prevail. It will be where the criminal case is disposed of by the Court before the Collector is

able to pass final order under Sub-section (1) of Section 72. In such a case the Court shall have the jurisdiction to pass such orders regarding the disposal of property as it may deem fit and, thereafter, the Collector shall have no jurisdiction to further deal with the property.

7. I do not consider that the decision given by the learned counsel is in contrast with the order passed by the learned Magistrate. It has been stated in Ved Prakash's case (supra) that after conclusion of the trial the court has jurisdiction to pass order regarding the disposal of the property, which means, disposal of the property according to Section 452 Cr.P.C. which provides that he can dispose of the property by destruction, confiscation or deliver it to any person claiming to be entitled thereof or otherwise. So besides the power of disposing it of by destruction, confiscation or delivery of property he can dispose it of by adopting other methods too. The words 'or otherwise' indicate that such power of the Magistrate is not confined to the given facts and circumstances, rather it is wide enough. It may include referring the matter to the collector for initiating any proceeding for confiscation. By Section 452 Cr.P.C. he could have also confiscated but when a special Act has come into force the said power is abrogated and conferred it to the District Magistrate to exercise it under the provisions of Section 72 of U.P. Excise Act.

8. Learned counsel has objection that provisions of Section 72 of the U. P. Excise Act is related only where an offence punishable under this section has been committed. He has interpreted in the way that if the case does not end, conviction in proceeding under Section 72 of the U. P. Excise Act cannot be started.

9. A plain reading of Section 72 of the U. P. Excise Act will reveal the actual State of affairs. In Sub-section (1) it has been mentioned that whenever an offence punishable under this Act has been committed it does not mean that it should be committed by a person or by a group of persons. After going through the prosecution case it appears that for the contraband articles an offence under Section 60 of the Act was committed. But for the reasons that none was caught red-handed or that no test identification parade was held for the identification of the persons who fled away from the place of the occurrence the revisionist and the

co-accused were acquitted. That does not mean that no offence in respect of the excise materials recovered from the car in question was committed. In these circumstances I must hold that even if when a particular person or a group of person are acquitted for the same reason or other proceedings under Section 72 of the Act can be started for the confiscation of the contraband articles including the car in which those articles were being transported. Accordingly, I do not find any infirmity in the order passed by the learned Magistrate or by the learned appellate Court while dismissing the appeal. There is no illegality in the order for which both the orders can be interfered with.

10. Being devoid of merit the revision is dismissed.

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