

Suresh Dave Vs. State of M.P.

Suresh Dave Vs. State of M.P.

SooperKanoon Citation : sooperkanoon.com/497344

Court : Madhya Pradesh

Decided On : Jan-03-2003

Reported in : 2003CriLJ3141; 2003(1)MPHT439

Judge : S.L. Kochar, J.

Acts : Madhya Pradesh Excise Act, 1919 - Sections 47A(3) and 47D; Madhya Pradesh Excise (Amendment) Act, 2000; Code of Criminal Procedure (CrPC) , 1974 - Sections 451 and 457

Appeal No. : Misc. Criminal Case No. 4390/2002

Appellant : Suresh Dave

Respondent : State of M.P.

Advocate for Def. : M. Upadhyaya, Dy. Adv. General

Advocate for Pet/Ap. : P.K. Shukla and ;M.S. Chauhan, Adv.

Disposition : Petition allowed

Judgement :

ORDER

S.L. Kochar, J.

1. This petition has been filed against the order dated 26-10-2002 passed by Addl. Sessions Judge, Mhow, District Indore in Cr. Revision No. 619/2002 arising out of the order dated 4-10-2002 passed by the learned Judicial Magistrate First Class, Mhow in Cr. Case No. 277/2002 whereby dismissing the application of the applicant filed under Section 451/457 of the Code of Criminal Procedure for grant of Tata Sumo bearing Registration No. MP-09-S-5511 on interim custody of the applicant, he being a registered owner of the vehicle.

2. The application of the applicant has been dismissed by both the Courts below on the ground that as per provisions under Section 47D of the M.P. Excise Act, 2000 (hereinafter referred to as the 'Act') the Criminal Court has no jurisdiction to release the vehicle on interim custody because, the District Magistrate has already initiated the proceedings against the applicant for confiscation of the vehicle and other seized property as per provision under Section 47 of the Act.

3. The contention of the learned Counsel for the applicant is that up-till now as per provision under Section 47-D of the Act, the Criminal Court has not been intimated by the District Magistrate for initiation of any confiscation proceedings regarding the seized Tata Sumo. Therefore, the Criminal Court has jurisdiction to release the vehicle on Supurdginama. This vehicle was seized on 11-9-2002 and is lying in open ground. The same is deteriorating day-by-day. Therefore, the Criminal Court has jurisdiction to release the vehicle on Supurdginama. Learned Counsel also submitted that up-till now the applicant has not received any show-cause notice as per provision under Section 47-A of the Act from the Office of the District Magistrate/Collector regarding confiscation proceedings. He also submitted that several times the applicant approached the office of the District Magistrate, but he has not received any reply or document for the purpose of initiation of proceedings for confiscation.

4. On the other hand, learned Counsel for the State has supported the impugned order. According to him, as per provision under Section 47-D of the Act, the Criminal Court has no jurisdiction to release the property seized in interim custody because the confiscation proceedings are already pending before the learned District Magistrate.

5. Having heard the learned Counsel for the parties and after perusing the entire record, this Court is of the opinion that as per the facts mentioned in para 4 of the impugned order passed in revision by the Revisional Court, it is crystal clear that the Excise Department or the Collector has not sent any intimation to the Criminal Court about initiation of confiscation proceedings regarding the seized Tata Sumo. Under Section 47-D of the Act, the Criminal Court has no jurisdiction only when the Collector sent the intimation about initiation of confiscation proceedings of the vehicle, but in the present case, no such intimation was ever sent and received by the Criminal Court. The learned Revisional Court has taken cognizance of some document or letter lying in the case diary showing the fact about initiation of confiscation proceedings before the Deptt. But that alone is not sufficient. The requirement of Section 47-D of the Act is that the Criminal Court has to be intimated by the Collector about initiation of confiscation proceedings of the vehicle or the other seized property involved in that particular case. But, no such intimation has yet been sent by the Collector to the Criminal Court. Hence, the Criminal Court has jurisdiction to entertain the application and pass appropriate order.

6. The legal position is that if the Criminal Court has been given intimation as per provision under Section 47-D of the Act about initiation of confiscation proceedings by the Collector regarding confiscation then the Criminal Court is ceased of the matter and has no jurisdiction to pass any order for interim custody, or confiscation of vehicle. But at the same time, the Collector has jurisdiction to pass order for interim custody of the vehicle or property looking to the facts and circumstances of the case and in the interest of safeguard of property as well as to protect the person suffering from financial loss. In the facts and circumstances of the present case, since there is no compliance of Sections 47-A (3) (a) and 47-D of the Act up-till now and no notice has been issued by the Collector/Authority to the applicant for initiation of confiscation proceedings, it would be just and proper to release the vehicle on interim custody in favour of the applicant who is the Registered owner of the aforesaid vehicle (Tata Sumo).

7. In the result, this petition is allowed. The seized Tata Sumo bearing Registration No. MP-09-S-5511 is directed to be released on interim custody of the applicant

upon his furnishing a bond of Rs. 4,00,000/- with one surety of equal sum to the satisfaction of the Criminal Court subject to the condition that the applicant shall not alienate this vehicle. He shall also not change its condition, colour etc., and shall produce the vehicle whenever and wherever he is directed to do so by the Criminal Court. Breach of any of the conditions would entail cancellation of this order automatically.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com