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Court : Madhya Pradesh

Decided On : Mar-26-2008

Reported in : 2008(3)MPHT126

Judge : R.C. Mishra, J.

Appellant : Harendra Singh Thakur and anr.

Respondent : State of Madhya Pradesh

Disposition : Petition allowed

Judgement :

R.C. Mishra, J.

1. This is a petition, under Section 482 of the Code of Criminal Procedure (for short 'the Code'), for having the order, directing confiscation of seized jeep, bearing registration No. MP-36-D-0494, quashed.

2. The jeep was seized from the possession of its driver-petitioner No. 2 in connection with Crime No. 841/07 registered at Kotwali Tikamgarh for the offence punishable under Section 34(1)(a) of the M.P. Excise Act, 1915 (hereinafter referred to as 'the Act'). The allegation against the petitioner No. 2, in short, was that on 14-12-2007 he was found carrying, without any license, permit or pass granted under this Act, four crates (48 bottles) of Beer in the Jeep owned by the

petitioner No. 1.

3. After due investigation, charge-sheet was submitted before Chief Judicial Magistrate, Tikamgarh. The accused/petitioner No. 2 pleaded guilty and was, accordingly, convicted under Section 34(1)(a) of the Act by CJM, Tikamgarh and was sentenced to suffer imprisonment till rising of Court and to pay a fine of Rs. 3000/- , in default to undergo simple imprisonment for seven days. However, the jeep was also confiscated and the operative part of the corresponding judgment passed on 16-10-2007 in Cr. Case No. 1820/07 contained a specific direction to auction the jeep and to deposit the sale proceeds with the Government Treasury.

Being aggrieved by the judgment and the order of confiscation, the petitioners preferred an appeal before the Court of Session. It was allowed in part vide a common judgment dated 7-11-07 passed in Cr. Appeal Nos. 147/07 and 154/07. Accordingly, the matter was remanded to the Trial Magistrate with a direction to decide the question as to confiscation of the jeep, after giving an opportunity of being heard to its registered owner-petitioner No. 1. Thereafter, for the reasons recorded in the order dated 24-11-2007, the Chief Judicial Magistrate rejected owner's prayer, that was made by way of an application, under Section 452 of the Code, for returning the vehicle. This order was subject-matter of the appeal by both the petitioners. It was ultimately dismissed by the Sessions Judge, Tikamgarh vide judgment dated 13-12-07, passed in Cr.A. No. 171/07.

4. The legality, propriety and correctness of the confiscation order as affirmed by the Appellate Court have been challenged on the following grounds:

(i) The Trial Magistrate had no authority to order confiscation of the jeep in view of the fact that under Section 34(3) of the Act, only a vehicle used for carrying quantity of liquor exceeding 50 liters could be confiscated whereas, admittedly, the quantity of Beer allegedly found in the Jeep was less than 50 litres.

(ii) Under Section 47-A of the Act, the order of confiscation can be passed by the Collector only.

(iii) There was nothing on record to suggest that the offence was committed with the consent or connivance of petitioner No. 1.

5. However, at the outset, the learned Panel Lawyer has questioned the maintainability of the petition on the ground that under its garb, provisions of Section 397(3) of the Code, that bars second revision, cannot be circumvented. He is further of the view that on merits also, no interference under the inherent powers is called for with a well-reasoned appellate order affirming confiscation of the seized jeep.

Obviously, Section 47-A of the Act and corresponding bar of jurisdiction of the Trial Court in the matter of confiscation are not germane to the facts of the case as the quantity of liquor found to be transported illegally was less than 50 bulk litres.

6. A bare perusal of the order dated 27-11-2007 passed by learned CJM would reveal that she was not oblivious of the legal position that upon conviction for the offence punishable under Section 34(1)(a) of the Act, the confiscation of the conveyance used for commission thereof can be confiscated under Sub-section (3) of Section 34 of the Act, only when the quantity of liquor exceeds fifty bulk litres. However, the learned Magistrate proceeded to justify the confiscation of the jeep in the wake of the enabling provision as contained in Section 46 of the Act. In appeal, learned Sessions Judge also endorsed the view taken by the CJM by making reference to the change in corresponding legal position brought about by deletion of the Proviso to Section 46 of the Act by the Amending Act of 22 of 2000 w.e.f. 4-8-2000. The Proviso was couched in the following terms:

Provided that no animals, carts, vessels, rafts and other conveyance shall be liable to confiscation if it is proved that they are not the property of the offender and if the owner thereof establishes that he had no reason to believe that such offence was being or was likely to be committed.

7. The power to confiscate a vehicle and other things under Section 46 is subject to the provision of Sub-section (1) of Section 47 of the Act that contemplates a decision on the point as to whether such a thing is liable to confiscation. The word 'decides' as used in this provision is very significant. It casts a duty upon the

Magistrate to hear all the parties concerned and to weigh the reasons for and against before settling the question of confiscation (Ramesh Chandra v. N. Pandhy : AIR1959 Ori196 referred to).

8. It is an oft-quoted saying 'to judge is speculative and to decide practical'. However, the fact remains that initially, no opportunity was granted to the petitioner No. 1 before ordering confiscation of his jeep upon conviction of its driver for the offence of an illegal transportation of liquor therein. It is true that in pursuance of the appellant judgment dated 7-11-2007, a reasonably sufficient opportunity was given to the petitioner No. 1 to show cause against the proposed confiscation but the fact of the matter is that he was neither present at the time when the liquor was recovered from the Jeep nor there was any evidence to suggest that he had knowledge that the liquor was being transported in his jeep. In this view of the matter, mere fact that he was the registered owner of the jeep would not be sufficient to indicate his complicity in the offence.

Thus, confiscation of the jeep for an offence involving illegal transportation of only 48 bottles of Beer would certainly amount to a disproportionate penalty on the owner of the Jeep.

9. Ordinarily, in view of the rider placed by Sub-section (3) of Section 397 of the Code, no person can be allowed to take recourse to the Second Revision under Section 397(1) or under the inherent powers of this Court. However, as explained by the Apex Court in Krishnan v. Krishnaveni : 1997 CriLJ1519 and reiterated in Rajathi v. C. Ganesan : 1999 CriLJ3668 , when the High Court on examination of the record finds that there is grave miscarriage of justice or abuse of the process of the Court or the required statutory procedure has not been complied with or there is failure of justice, it is the duty of the High Court to have the mistake committed by the Revisional Court corrected at the inception lest grave miscarriage of justice would ensue.

10. In the light of the facts and circumstances, as highlighted above, the impugned order of confiscation requires interference under the inherent powers.

11. Consequently, the petition is allowed and the corresponding orders directing and affirming confiscation of the Jeep are hereby set aside. Instead, it is directed that the possession of the seized Jeep be immediately handed over to petitioner No. 1.

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