

Mohd Sajjad Bhat Vs. State of J and K

Mohd Sajjad Bhat Vs. State of J and K

SooperKanoon Citation : sooperkanoon.com/901749

Court : Jammu and Kashmir

Decided On : Jul-24-2004

Reported in : 2005(2)JKJ159

Judge : S.K. Gupta, J.

Acts : Code of Criminal Procedure (CrPC) , 1989 - Section 561A; ;Prevention of Tourism Act - Sections 3, 4, 5 and 49

Appeal No. : 561-A Cr. P.C. No. 125/2003

Appellant : Mohd Sajjad Bhat

Respondent : State of J and K

Advocate for Def. : B.S. Salathia, AAG

Advocate for Pet/Ap. : O.P. Thakur, Adv.

Disposition : Petition dismissed

Judgement :

S.K. Gupta, J.

1. This petition under Section 561A Cr.P.C. has been preferred with a prayer to quash the judgment and order dated 06-11-2003 passed by Special Court, constituted under POTA, in File No. 108/Appeal, titled Mohd. Sajjad Bhat v. State,

whereby appeal for release of vehicle has been dismissed. Facts relevant for the disposal of this petition, in resume, may be noticed.

2. A vehicle Maruti Versa Temp. No. DL-IK Temp-4252 was seized from the petitioner under FIR 102/2002 for offences under Sections 3/4/5 POTA. Mohd. Sajjad Bhat, accused, had approached the Designated authority for the release of the vehicle seized in the aforesaid case in his favour being its owner. Designated Authority held that the car seized under the aforesaid FIR was purchased from the money acquired by the petitioner from the terrorists' proceeds.

3. Aggrieved by the order of the Designated Authority, the petitioner impugned, its correctness before the Special Court, constituted under POTA, in filing an appeal on 30-04-2003 on variety of grounds. It was urged by the petitioner that the vehicle should have been seized after the prior approval of the Director General of Police and its seizure/attachment could have been done by a person not below the rank of Superintendent of Police. It was also stated that the Designated Authority had ignored the explanation submitted by the petitioner in reply to the notice with regard to the money he had invested for the purchase of the vehicle. Further plea taken by the petitioner before the Appellate Court was that there was no limitation for providing an appeal against the order passed by the Designated Authority. It was further stated that the order passed by the Designated Authority is not in accordance with law and prayer was made to set aside the order. It was further prayed that the vehicle, having been seized from the possession of the petitioner, be released in his favour being the owner.

4. The State has taken a specific plea before the Appellate Court that the vehicle in question was used by the petitioner accused for transporting the arms and ammunition, and explosives; and one and a half Kg. of RDX was recovered from the vehicle in question by the Investigating Authority. It was further contended that the accused was working for the terrorists to carry out the terrorists proceeds in the State and was booked under POTA. Since the challan could not be presented within the time provided, i.e., 180 days, his release on bail was by compulsion under Section 49 of the POTA. It was further pleaded by the State that the car has been purchased out of the funds received from Pakistan and the order passed by

the Designated Authority in declining the release of the vehicle in favour of the petitioner/accused, did not suffer from any procedural infirmity. The appeal of the petitioner did not merit acceptance with the Appellate Court and stood dismissed vide order dated 06-11-2003, which became subject matter of challenge in this petition.

5. After hearing the learned counsel for the parties and on going through the order impugned in appeal propounded by the Designate Court, it is found that the Appellate Court has dwelt on each plea taken by the petitioner/appellant in detail and dismissed the appeal by a well-considered order, which does not require any interference in this petition in exercise of inherent jurisdiction of the Court.

6. Mr. O.P. Thakur, learned counsel appearing for the petitioner, however, pointed out, during the course of argument, from the record that the mandatory procedure prescribed under POTA has not been followed by the Investigating Agency in effecting the seizure of the vehicle and also the Designated Authority in not appreciating the point raised in proper perspective, while declining the prayer for the release of the vehicle in favour of the petitioner, in my opinion, is a matter which touches the merit of the case and, thus, cannot be looked into in proceedings under Section 561-A Cr.P.C.

7. It is well settled proposition of law that for invoking the inherent jurisdiction of the Court under Section 561-A Cr.P.C. for the purpose of quashing the proceedings, the defence of the accused/petitioner is not to be taken into consideration. Inherent powers are required to be very sparingly used, viz., under compelling reasons either for the purpose of preventing the abuse of process of the Court and also to secure ends of justice.

For what has been stated and discussed above, the petition, in my opinion, does not possess any merit and is, accordingly, dismissed.