

Faiyaz Vs. the State of U.P

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Court : Allahabad

Decided On : Nov-18-2010

Judge : Raj Mani Chauhan, J.

Appeal No. : U/S 482/378/407 No. - 4478 of 2010

Appellant : Faiyaz

Respondent : The State of U.P

Advocate for Def. : Govt. Advocate

Advocate for Pet/Ap. : Girish Kumar Pandey, Adv

Judgement :

1. Heard Sri Girish Kumar Pandey, learned counsel for the petitioner and Sri Rajendra Kumar Dwivedi, learned Additional Government Advocate for the State as well as perused the documents available on record.

2. This petition under Section 482 of the Code of Criminal Procedure (hereinafter referred to as the 'Code') has been filed by the petitioner for quashing the impugned order dated 18.10.2010 passed by the learned Chief Judicial Magistrate, Ambedkar Nagar in Misc. Case No. 1511/2010, under Section 207 of the Motor Vehicle Act, 1988 (hereinafter referred to as the 'Act') whereby he has rejected the application moved by the petitioner to release his vehicle seized by the A.R.T.O., Ambedkar Nagar under Section 207 of the Act.

3. The only question involved for consideration before this Court is whether the vehicle under release seized by Assistant Transport Officer, Ambedkar Nagar under Section 207 of the Act can be released by the Chief Judicial Magistrate, which can be decided at this stage. Therefore, the petition is being decided at this stage.

4. From a perusal of the record, it appears that the petitioner moved an application before the learned Chief Judicial Magistrate, Ambedkar Nagar under Section 457 of the Code for release of his vehicle which was seized by Assistant Transport Officer, Ambedkar Nagar under Section 207 of the Act. The learned Chief Judicial Magistrate on the application of the applicant called a report from the A.R.T.O., Ambedkar Nagar but he neither submitted his report nor any challan. The learned Chief Judicial Magistrate, therefore, did not think it proper to release the vehicle in favour of the applicant. He, therefore, by the impugned order dated 18.10.2010 rejected the application of the applicant. The petitioner being aggrieved by the impugned order passed by the learned Chief Judicial Magistrate, Ambedkar Nagar has filed the present petition under Section 482 of the Code.

5. The learned counsel for the petitioner submits that Section 457 of the Code lays down the provision for releasing the property seized by the police. The petitioner was the registered owner of the vehicle under release. He, therefore, moved an application before the learned Chief Judicial Magistrate for release of his vehicle. The learned Chief Judicial Magistrate without assigning any reason has rejected his application by the impugned order which is bad in the eye of law. Since the petitioner is registered owner of the vehicle, therefore, the same be ordered to be released in his favour.

6. Learned counsel for the petitioner in support of his argument has placed reliance on the cases Phool Chandra v. Assistant Regional Transport Officer (A/s) Banda and Ors. decided by this court in Civil Misc. Writ Petition No. 30978 of 1996 and Ram Prakash Sharma v. State of Haryana reported in [(1978) 2 Supreme Court Cases 491] decided by the Hon'ble Apex Court.

7. Sri R.K. Dwivedi, learned A.G.A. opposed the petition and supported the impugned order passed by the learned Chief Judicial Magistrate, Ambedkar

Nagar.

8. Sri Dwivedi submits that Section 207 (2) of the Act specifically provides that when any vehicle is seized under Sub Section (1) of Section 207 of the Act by the ARTO or RTO, the registered owner or person in charge of the motor vehicle may apply to the transport authority or any officer authorized in this behalf by the State Government under Section 207 (2) of the Act. He cannot move application for release of the vehicle before the Judicial Magistrate or Chief Judicial Magistrate. Sri Dwivedi has argued that in catena of judgments, it has been held by the Division Bench as well as Single Judge of this Court that the vehicle seized by the ARTO or RTO under Section 207 of the Act may be released only by the Transport Authority or any Officer authorized by the State Government in this behalf. The impugned order passed by the learned Chief Judicial Magistrate, Ambedkar Nagar is, therefore, perfectly right which does not call for any interference. Sri Dwivedi in support of his argument has placed reliance on the cases Mazhar Ali Khan v. Chief Judicial Magistrate and Others reported in [1995 (2) AWC 849 (DB)], Gyan Prakash Mishra v. Asstt. Regional Transport Officer-II (Enforcement) Allahabad and Others reported in [2006 (9) ADJ 655 (All) (DB)], Jagat Pal Singh v. State of U.P. and Others reported in [2001 (1) AWC 551] and Deoraj Singh v. State of U.P. reported in [2010 (69) ACC 259] decide by the this Court.

9. I have considered the submissions advanced by learned counsel for the petitioner and learned A.G.A as well as gone through the case laws cited by the learned counsel for the parties.

10. Section 207 of the Act provides for seizure of vehicle in contravention of certain provisions under the Act as well as the provision for release of such vehicle which is being extracted below:

"207. Power to detain vehicles used without certificate of registration permit, etc.

(1) Any police officer or other person authorized in this behalf by the State Government may, if he has reason to believe that a motor vehicle has been or is being used in contravention of the provisions of section 3 or section 4 or section 39 or without the permit required by sub-section (1) of section 66 or in contravention or any condition of such permit relating to the route on which or the area in which or the purpose for which the vehicle may be used, seize and detain the vehicle, in the prescribed manner and for this purpose take or cause to be taken any steps he may consider proper for the temporary safe custody of the vehicle:

Provided that where any such officer or person has reason to believe that a motor vehicle has been or is being used in contravention of section 3 or section 4 or without the permit required by sub-section (1) of section 66 he may, instead of seizing the vehicle, seize the certificate of registration of the vehicle and shall issue an acknowledgment in respect thereof.

(2) Where a motor vehicle has been seized and detained under sub-section (1), the owner or person incharge of the motor vehicle may apply to the transport authority or any officer authorised in this behalf by the State Government together with the relevant documents for the release of the vehicle and such authority or officer may, after verification of such documents, by order release the vehicle subject to such conditions as the authority or officer may deem fit to impose."

11. In case of Ram Prakash Sharma v. State of Haryana (supra) relied upon by learned counsel for the petitioner, the matter related for release of currency notes which were seized by the police in connection with the offence registered by the police against the third party accused under the Code while this case relates to release of vehicle seized by the Assistant Transport Officer under Section 207 of the Act where sub section (2) of Section 207 of the Act provides specific provision for release of vehicle. The facts before the Hon'ble Apex Court in the above cited

case were different from the facts of the present case, therefore, the law laid down by Hon'ble Apex Court in the above cited case will have no application to the facts of the present case.

12. In the case of Phool Chandra v. Assistant Regional Transport Officer (A/s) Banda and Ors. the Division Bench of this Court had held that where a vehicle was seized by the Transport Authority under Section 207 of the Act, the registered owner or the person incharge of the vehicle, could move application for release of the vehicle either under Section 207 (2) of the Act before the Transport Authority or the Officer authorized by the State Government in this behalf or under Section 457 of the Code but in the case of Mazhar Ali Khan v. Chief Judicial Magistrate and Others (supra) decided by Division Bench of this Court, it had been specifically held that where a vehicle is seized by Transport Authority under Section 207 of the Act only Transport Authority or any Officer authorized by the State Government in this behalf has power to release the vehicle. The relevant observation of the court finds place in para 4 of the judgment which is being reproduced below:

"Sub-section (2) of Section 207 provides for release of the Vehicle. Although under sub-section (1), any police officer or any other person authorized in this behalf can seize and detain the vehicle, but under sub-section (2), only transport authority or the officer authorized in this behalf by the State Government has the power to release the vehicle irrespective of the fact that the vehicle was seized and detained by some one else but for this purpose the owner or the person incharge of the motor vehicle has to apply before them. For the reasons given above, the Regional Transport Officer was not justified to refuse to entertain the application for release on the ground that it was seized by police officer."

13. In the case of Jagat Pal Singh VS. State of U.P. and Others (supra) the same view as above had been expressed by the Division Bench of this Court. The relevant observation of the court finds place in para 4 of the judgment which is being extracted below:

"From a perusal of Section 207 of the Act it appears that the remedy available to the petitioner is to apply to the transport authority or any officer authorized in this behalf by the State Government together with relevant documents for the release of the vehicle in terms of sub-section (2) of Section 207 of the Act. We are of the view that since statute provides power to release the vehicle on the concerned authority under sub-section (2) of section 207 of the Act and the application of the writ petitioner, the writ petitioner should act according to the statute and take appropriate steps in terms of section 207 (2) of the Act and make appropriate application before the concerned authority. We are of the further view that it is incumbent on the part of the parties to follow the procedure laid by the statute and have no jurisdiction or authority to direct release of the vehicle through Chief Judicial Magistrate with all respect to the other Divisions Bench orders which have been passed from time to time which are not in the form of judgment and in fact no ratio has been laid down therein. It is well settled that mere order will not have binding unless a ratio has been laid down."

14. In the case of Deoraj Singh v. State of U.P.(supra), the court relying on earlier case laws cited therein has laid down the same principle of law as laid down in the above cited case. The relevant observation of the Hon'ble Court finds place in para 10 of the judgment which is being extracted below:

"From a perusal of the Section 207 (2) of the Motor Vehicles Act, 1988 the remedy available to the applicant to apply to the transport authority or to officer authorized in this behalf by the State Government together with relevant documents for the release of the vehicle. This issue has been considered by the Division Bench of this Court on case of Jagat Pal Singh V State of U.P. And others in Criminal Misc. Writ Petition No. 5528 of 2000 (M/B) as reported in 2001 (1) AWC 551."

15. Considering the law laid down by this Court in the above cited case, I do not find any ground to take a different view other than the view taken by this court in the above cited cases. I am of the view that the application moved by the petitioner for release of the vehicle which was seized by the Assistant Transport Officer was not maintainable before the learned Chief Judicial Magistrate, which has rightly been rejected by him.

16. In view of the discussions made hereinabove, the petition stands disposed of finally with the observation that it will be open to the petitioner to move application for release of his vehicle before the appropriate authority under Section 207 (2) of the Act and the said authority will pass appropriate orders in accordance with law.

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