
(1992) 02 CAL CK 0044
In the Calcutta High Court

Deb Kumar Adak

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 04-02-1992

Acts Referred:

Bengal Excise Act, 1909 — Section 65(1)
Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (1992) 1 CALLT 332

Hon'ble Judges : Jyotirindra Nath Hore, J

Bench : Single Bench

Advocate : Md. Nurul Haque and Kazi Safiullah, for the Appellant; M.R. Chakraborty, for the Respondent

Judgement

Jyotirindra Nath Hore, J.—This is an application u/s 391/401 read with Section 482 of the Cr. P.C. for setting aside the order dated 17.12.91 passed by the learned Sub-Divisional Judicial Magistrate, Chandernagar.

2. On 17.11.91 the excise staff attached to Tarakeswar Circle, District Hooghly seized the petitioner's Ambassador car being WBG 6412 on the allegation that 280 litres of I.D. Liquor contained in 8 polythene jars were found inside the same. The petitioner, owner of the vehicle and one of the accused in the case, filed an application for release of the vehicle on bond. The learned S.D.J.M. rejected the prayer on the ground that he has no jurisdiction to pass any order regarding custody of the seized vehicle and the District Collector is only competent to pass any order regarding custody of the carrier. The petitioner has moved this court against the said order.

3. Mr. Kazi Safiullah, learned Advocate for the petitioner has contended that u/s 65(1)(b) the Excise Commissioner, the Collector or any Excise Officer not below the rank of Inspector of Excise authorised by Collector or general or special order may release the seized property before the case is lodged before the Magistrate which necessarily means that after the case is lodged before the Magistrate, the Magistrate is empowered to deal with the custody of the seized property. It has

been contended on behalf of the State that no prosecution report in the form of chargesheet as yet been submitted and the learned Magistrate has not taken cognizance and as such it cannot be said that the case has been lodged before the Magistrate.

4. Section 63 of the Bengal Excise Act, 1909 enumerates of what things are liable to confiscation. The proviso to Section 63, however, restricts the operation of confiscation to those cases only where the owner of such animals, carts or vessels or other conveyance has been proved to have been involved in the commission of the offence. Involvement of the owner of the conveyance or the vehicle in the offence is required to bring the owner of the vehicle, conveyance etc. within the mischief of Section 63. Section 64 contemplates a case when the Collector or Excise Officer has not exercised his discretion u/s 65(1)(b) when the Magistrate convicts the accused of the charge then the Magistrate must either confiscate the article or vehicle etc. or release article or vehicle after imposing a fine in lieu of the confiscation. The Magistrate has no discretion to release the article or the vehicle etc; without imposing fine in lieu of confiscation. u/s 65(1)(b) the Collector or the Excise Officer may release the seized vehicle before the case is lodged before the Magistrate. According to Mr. Safiullah, a case is lodged before the Magistrate as soon as the accused is brought before the Magistrate after arrest on the basis of allegation in the F.I.R. I am unable to accept this contention. The case is lodged before the Magistrate when the complaint is filed or a chargesheet is submitted on. the basis of which the Magistrate takes cognizance. In this case, on the basis of F.I.R. the police is still investigating the case and no prosecution report in the form of charge-sheet has been filed. It cannot, therefore, be said that a case under the Bengal Excise Act has been lodged before the Magistrate. At this stage the Excise Commissioner, the Collector or the authorised Excise Officer may take action u/s 65(1)(b). The order of the learned Magistrate can not, therefore, be held to be illegal.

5. The petitioner has, however, invoked the jurisdiction of this court u/s 482 Cr. P.C. to pass an appropriate order in the interest of justice. It appears that no confiscation proceeding u/s 63 in respect of the seized vehicle is pending. I have already referred to proviso of Section 63. If the seized vehicle remains in the custody of the Excise Authorities till the disposal of the case which may take considerable time, it is likely to deteriorate substantially causing hardship to the petitioner who is the owner of the vehicle. On the other hand, if the petitioner is ultimately found guilty, the learned Magistrate may adopt either of the two courses as provided by Section 64. So for the interest of justice. I order that the seized vehicle be returned to the petitioner on his execution of a bond for Rs. 1,00,000/- to the satisfaction of the learned S.D.J.M., Chandernagar on the conditions that he would not dispose of or transfer the vehicle till disposal of the case and would produce the vehicle before the court if and when called upon to do so. The revisional application is disposed of accordingly.