

(2006) 07 OHC CK 0075

In the Orissa High Court

Case No : Criminal Miscellaneous Case No. 1142 of 2005

E. Ankuda Patro

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 11-07-2006

Acts Referred:

Bihar and Orissa Excise Act, 1915 — Section 47, 66, 68, 68(1)
Criminal Procedure Code, 1973 (CrPC) — Section 397(3), 457, 482

Citation : (2006) CLT 799 (Suppl CrI) : (2006) 1 OLR 252 Supp : (2006) OLR 799 (Suppl CrI)

Hon'ble Judges : P.K. Tripathy, J

Bench : Single Bench

Advocate : Ashok Das, A.K. Biswal and P.K. Dhal, for the Appellant; A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

P.K. Tripathy, J.—This application u/s 482, Code of Criminal Procedure has been filed by the Petitioner with the prayer to quash order dated 12.01.2005, Annexure-1 passed by the learned Sessions Judge, Berhampur in Criminal Revision Petition No. 65 of 2004 and to pass order for release of the seized TVS Scooty (Moped) bearing Regn. No. OR 07 G 9563.

2. It appears from the impugned order dated 20.3.2003 at 11.30 A.M., the S.I. of Excise, E.I. and E.B., Berhampur found the Petitioner carrying 48 bottles of whisky in the seized T.V.S. Scooty, each containing 180 MI. and therefore the two-wheeler as well as the liquor was seized. Petitioner filed application u/s 457, Code of Criminal Procedure before the Judicial Magistrate, First Class, Berhampur in 2(a) C.C. No. 318 of 2003 and thereafter before learned Sessions Judge in the above noted Criminal Revision with the prayer to release the Scooty in his possession. Both the Courts below have rejected that prayer. Learned Sessions Judge, after taking note of the citations (mentioned hereafter) found that the seized article be subject to confiscation proceeding u/s 66 of the Bihar and Orissa

Excise Act and accordingly, rejected Petitioner's prayer for interim lease of the two-wheeler.

3. Learned Counsel for the Petitioner, on the question of maintainability of the application u/s 482, Code of Criminal Procedure in view of the provision u/s 397(3), Code of Criminal Procedure, argued that because of illegality in the order of the learned Sessions Judge, the same should be considered. It is the statutory mandate in Sub-section (3) of Section 397, Code of Criminal Procedure that a second revision by the same person cannot be maintained. Thus, a second revision in the guise of Section 482 Code of Criminal Procedure is not maintainable, if otherwise the application u/s 482, Code of Criminal Procedure merits consideration. On the other hand, inherent power of the Court can be invoked notwithstanding a decision in a criminal revision, if from the facts situation, the Court is of the opinion that the impugned order of the revisional Court suffers from illegality or that invoking the inherent power is necessary to give effect to any order under the Code or to prevent abuse of the process of the Court or otherwise to secure the ends of justice. Therefore, in this case, it is to be examined whether the grievance of the Petitioner vis-a-vis the impugned order of learned Sessions Judge comes within the purview of the aforesaid circumstances so as to invoke the inherent power.

4. In the Case of *Sunderbhai Ambala Desai v. State of Gujarat* (2003) 23 OCR (SC) 444, while in seisin of the matter relating to abuse of power by the police authorities in replacing valuables including gold ornaments, currency notes, etc. from police Malkhana, the apex Court found it desirable that steps should be taken for disposal of such property either in the interim custody or otherwise in accordance with the provision in Chapter XXXIV of Code of Criminal Procedure. Their Lordship, however, excluded the property, which is the subject matter of confiscation for appropriate decision by the concerned Court in given facts and circumstances. In the case of *Nabakishore Sahoo v. State of Orissa*, (2004) 29 OCR 683, learned Single Judge of this Court held that when the properties are seized for the offence u/s 47(a) of Bihar and Orissa Excise Act (in short, the Act), authority prescribed for confiscation in accordance with the provision u/s 66 has the competency to decide the question of confiscation and the Collector or the Excise Officer have the authority to consider the question of compounding of the offence and release of the vehicle in accordance with provision of Section 68(1) of the Act. However, his Lordship directed for release of the seized Scooter under certain terms and conditions. That direction in the said case for release of the scooter under certain terms and conditions has no force of binding precedent.

5. The aforesaid two decisions relied on by the Petitioner before this Court were placed before learned Sessions Judge, Berhampur. It is appreciated that learned Sessions Judge applied his mind to the said citations together with the ratio in the case of *Soubhagya Kumar Panda v. State of Orissa* (2003) 25 OCR 840, which is a Division Bench decision of this Court and found the distinguishing facts and circumstances in this case to apply the conclusion in the case of *Naba*

Kishore Sahu (supra) and rejected the application for release of property on the ground that it is the Collector or the Excise Officer, who are competent to consider the question of confiscation or otherwise, in accordance with the provisions in Section 66 and 68 of the Act.

6. Indeed, in the case of Saubhagya Kumar Panda (supra), a Division Bench has made a distinction as to in what type of cases provision under Sections 66 and 68 of the Act is invokable and where it is to be excluded. One category in which Magistrate is found to be competent to consider such matter where the vehicle was used not by the owner of the vehicle and there is no allegation of connivance of the owner for such illegal use of the vehicle. Applying the same analogy, it is found that allegations of the owner of the Scooty that he utilized the same to carry the seized whisky bottles and therefore, Magistrate's jurisdiction is excluded because the Collector and the Excise Officer have the jurisdiction either to compound u/s 68 or to proceed with the confiscation u/s 66 and therefore the matter relating to interim custody is to be considered in such forum. Under the given facts and provision of law impugned order of learned Sessions Judge, does not suffer from no illegality and this Court does not find it appropriate in this case to exercise inherent power when Petitioner has remedy by moving appropriate application before the competent authority vested with requisite power and jurisdiction under Sections 66 and 68 of the Act.

The Criminal Misc. Case is thus dismissed.