
(2013) 03 BOM CK 0202

In the Bombay High Court

Case No : Criminal Writ Petition No. 74 of 2013

Ganesh Jaglal Jaiswal

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 05-03-2013

Acts Referred:

Bombay Prohibition Act, 1949 — Section 65(a)
Motor Vehicles Act, 1988 — Section 41, 42, 43, 45, 47

Citation : (2013) 4 ABR 735 : (2013) 4 ACC 15 : (2013) ALLMR(Cri) 2377 :
(2013) 3 BomCR(Cri) 158 : (2013) CriLJ 3243

Hon'ble Judges : Tahaliyani M.L., J

Bench : Single Bench

Advocate : Rajnish Vyas, for the Appellant; D.B. Patel, Assistant Public
Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Tahaliyani M.L., J.—Rule, returnable forthwith. Heard finally by consent of learned Counsel for both the parties. This writ petition challenges the order passed by the Deputy Regional Transport Officer, Wardha in Appeal No. 4/2012/Wardha u/s 57 of the Motor Vehicles Act, 1988. The said appeal impugned the order passed by the Police Sub-Inspector, Police Station, Wardha City (prescribed authority). The Police Sub-Inspector (hereinafter referred to as "prescribed authority") by the said order dated 22nd November, 2012 has suspended the registration certificate of "Maruti" van bearing Registration No. MH-32A-185 for a period of 120 days from the date of deposit of said vehicle at Wardha Police Station. The order in question was passed by the Prescribed Authority in exercise of its powers u/s 53(1) of the Motor Vehicles Act (hereinafter referred to as "the said Act"). Section 53(1) of the said Act runs as under:

53. Suspension of registration:—(1) If any registering authority or other prescribed authority has reason to believe that any motor vehicle within its jurisdiction—

(a) is in such a condition that its use in public place would constitute a danger to the public, or that it fails to comply with the requirements of this Act or of the rules made thereunder, or

(b) has been, or is being, used for hire or reward without a valid permit for being used as such the authority may, after giving the owner an opportunity of making any representation he may wish to make (by sending to the owner a notice by registered post acknowledgment due at his address entered in the certificate of registration), for reasons to be recorded in writing, suspend the certificate of registration of the vehicle-

(i) in any case falling under Clause (a), until the defects are rectified to its satisfaction; and

(ii) in any case falling under clause (b), for a period not exceeding four months.

2. The appeal is provided by virtue of provisions of section 57 of the said Act, which run as under:

57. Appeals.-(1) Any person aggrieved by an order of the registering authority under sections 41, 42, 43, 45, 47, 48, 49, 50, 52, 53, 55 or 56 may, within thirty days of the date on which he has received notice of such order, appeal against the order to the prescribed authority

(2) The appellate authority shall give notice of the appeal to the original authority and after giving an opportunity to the original authority and the appellant to be heard in the appeal pass such order as it thinks fit.

3. The petitioner who is owner of the abovesaid vehicle, filed an appeal before the Deputy Regional Transport Officer (hereinafter referred to as "the appellate authority") challenging the order of prescribed authority. The appellate authority by its impugned order, remanded the case back to the prescribed authority for reconsideration.

4. Mr. Rajnish Vyas, learned Counsel for the petitioner has raised two issues-(1) that the prescribed authority could not have suspended the registration certificate during pendency of the criminal case involving the vehicle in an offence under the Bombay Prohibition Act, and (2) that the prescribed authority could not have directed the petitioner to keep the vehicle in custody of police or prescribed authority during the suspension period.

5. In this regard, it may be stated here that the vehicle was allegedly engaged in transportation of liquor without any valid permit. The vehicle was intercepted and an offence vide Crime No. 6138/2012 u/s 65(a) & (e) of the Bombay Prohibition Act was registered against the petitioner. The total value of the liquor and the vehicle seized by the police is stated to be Rs. 2,16,300/.

6. It is admitted position that the criminal case filed against the petitioner by the police under the Bombay Prohibition Act is pending. Mr. Vyas, learned Counsel has submitted that there was no reason to suspend the registration till the case

was decided. It is submitted that it was not permissible for the prescribed authority to take impugned action against the vehicle.

7. I have considered the submissions made by the learned Counsel and I have also gone through the provisions of sections 53 and 57 of the said Act. After having perused the relevant provisions, I have come to the conclusion that the powers of the prescribed authority or registering authority u/s 53 are not regulated by the result of prosecution, if any, filed against the offending vehicle. The action u/s 53 can be taken independent of any other action or prosecution launched or to be launched against the owner of the vehicle. The vehicle of the petitioner was admittedly not a transport vehicle. It was allegedly involved in transportation of liquor. The transportation by the passenger vehicle was obviously in contravention of the provisions of the Motor Vehicles Act. The vehicle was used for hire or reward without a valid permit for said purpose.

8. Mr. Vyas, has further submitted that the vehicle was searched when it was stationary in front of house of the petitioner. It is submitted that since the vehicle was not intercepted while it was plying, it cannot be said that the vehicle was used for transportation. These arguments, in my considered opinion, are devoid of any merit. Once liquor in huge quantity is found in a passenger vehicle it can normally be inferred that the consignment was for transportation. It hardly makes any difference if the vehicle was searched when it was stationary.

9. The other issue raised by Mr. Vyas is with regard to the directions given by the prescribed authority to the petitioner to deposit the vehicle at Police Station pursuant to suspension of registration certificate. A bare perusal of section 53 of the said Act makes it abundantly clear that the powers of prescribed authority u/s 53 are confined to suspension of registration certificate and do not empower the prescribed authority to take custody of the vehicle. In my considered opinion, therefore, the directions issued by the prescribed authority for depositing the vehicle at Wardha City Police Station were not in accordance with the rules.

10. Mr. Vyas, learned Counsel for petitioner has submitted that the appellate authority has committed an error in remanding the matter back to the prescribed authority for reconsideration. I have gone through the order passed by the appellate authority. It is a matter of record that the appellate authority has not given any reasons for remanding the matter back to the prescribed authority. It was possible for the appellate authority to decide all the issues at his level, instead of remanding the matter back to the prescribed authority. However by remanding the matter back to the prescribed authority, the appellate authority has not committed any illegality which needs interference by this Court in exercise of writ jurisdiction. Since the petitioner's case will be heard afresh by the prescribed authority, it is not necessary to discuss the other issues involved in the petition in detail. Suffice it to say that the order passed by the prescribed authority directing the petitioner to deposit his vehicle at Police Station was not in accordance with the law. For all these reasons, I pass the following order-

ORDER

The Maruti Van bearing Registration No. MH-32A-185 shall be returned to the petitioner. The rest of the prayers of the petitioner are dismissed.

It is needless to say that the return of the vehicle to the petitioner would not, in any manner, indicate that he has been permitted to ply the vehicle. The suspension order passed by respondent No. 3 shall remain in force in accordance with the order passed by respondent No. 3. The respondent No. 3 shall decide the matter afresh in accordance with the directions issued by respondent No. 2. The fresh decision shall be taken as early as possible and preferably within a period of two weeks from the date of receipt of this order by respondent No. 3.

The criminal writ petition accordingly stands disposed off.

Steno copy be provided to the learned Counsel for respective parties. The respondents 2 and 3 shall act upon the copy of operative part of the order.

Rule made absolute accordingly.