
(1995) 03 AHC CK 0034

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 5850 of 1995

Mazhar Ali Khan

APPELLANT

Vs

Chief Judicial Magistrate, Fatehpur and others

RESPONDENT

Date of Decision : 08-03-1995

Acts Referred:

Motor Vehicles Act, 1988 — Section 207(1), 207(2)

Citation : AIR 1996 All 16 : (1996) 1 CivCC 456

Hon'ble Judges : R.A. Sharma, J;M.C. Agarwal, J

Bench : Division Bench

Advocate : Rajeev Chaddha, for the Appellant;

Final Decision : Allowed

Judgement

R.A. Sharma, J.—On 23-2-1995 the petitioner's passenger bus was seized by Station House Officer, police station Kotwali, Fatehpur. The petitioner thereafter moved an application for release of his vehicle before the Regional Transport Officer, Allahabad. This application has been rejected on 28-2-1995 on the ground that as the vehicle has been seized by the police Official, he has no power under sub-section (2) of Section 207 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) to release the vehicle petitioner also moved an application before the Chief Judicial Magistrate for release of vehicle but his prayer has also been rejected by the Chief Judicial Magistrate on 28-2-1995 on the ground that he has no power under sub-section (2) of Section 207 of the Act to pass any order of release. Being aggrieved, the petitioner has filed this writ petition.

2. We have heard the learned counsel for the petitioner and the learned Standing Counsel.

3. Under sub-section (1) of Section 207 any police officer or other person authorised in this behalf may seize and detain the vehicle if he has reason to believe that the vehicle is being used in contravention of the provisions mentioned therein. This provision imposes obligation on the officer who seizes

the vehicle to take steps for temporary safe custody of the vehicle. Division Bench of this Court in Jugal Kishor v. State 1994 (24) ALR 585 has laid down that such officer who has seized the vehicle can pass order for temporary release of the vehicle in favour of the owner subject to furnishing of adequate security by him.

4. Sub-section (2) of Section 207 provides for release of the vehicle. Although under subsection (1) any police officer or any other person authorised in this behalf can seize and detain the vehicle, but under sub-section (2) only transport authority or the officer authorised 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 in charge 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.

5. The writ petition is accordingly allowed. The order of Regional Transport Officer, Allahabad, dated 28-2-1995 is quashed. Regional Transport Officer, is directed to decide petitioner's application for release afresh in accordance with law within one week from the date of presentation of certified copy of this order. It is made clear that if the police officer, who has seized the vehicle has laid complaint before appropriate criminal court, in that event the transport officer will not pass any order on the release application. He will relegate the owner to the criminal Court before which complaint has been laid by the concerned police Officer.

6. Certified copy of this order may be given to the learned counsel for parties on payment of usual charges within a week.

7. Petition allowed.