
(1983) 11 AHC CK 0007

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 5133 of 1983

Munnidevi Tej Kumari

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision : 09-11-1983

Acts Referred:

Motor Vehicles Act, 1939 — Section 112, 113, 123, 129, 13

Citation : (1982) 8 ACR 40

Hon'ble Judges : M. Wahajuddin, J

Bench : Single Bench

Advocate : R. Pandey, for the Appellant;

Judgement

M. Wahajuddin, J.—The applicant has come forward with a prayer that the orders of the Magistrate dated 4-3-1983, 16-4-1983 and 19-4-1983, directing that the vehicle can be released only after depositing certain amounts, may be quashed and the truck No. UTZ 1084 may be released.

2. The Magistrate in the order stated that certain amounts are due as road tax and as Mal Kar and the entire amount be deposited first. It would no doubt appear that in the first order such dues were shown to be Rs. 15000/- and the applicant was asked to deposit Rs. 20,000/-. Later by order dated 19-4-1983 it was stated that Rs. 5222.75 P Malkar and Rs. 1592. 25 P as road tax are in arrears, which should be deposited. By my order dated 11-7-1983 at the stage of admission, I directed the Magistrate to determine at the earliest the exact amount due upto 26-1-1983. The Magistrate vide its order dated 22-8-1983, which is annexed, after recording some evidence held that Rs. 835.35 is due as road tax and Rs. 5222.75 P is due as goods tax and Rs. 10/- per week is payable as penalty until the date of judgment. That order has also been assailed maintaining that the Magistrate has not considered the matter properly and the amount has been determined arbitrarily. Certain amount has already been deposited by the applicant and no amount is due. This has been done by filing a supplementary-affidavit.

3. The application has been opposed by the State and a number of arguments have been advanced. It is urged that actually when the very permit has not been renewed, the vehicle cannot be on the road. It is, farther, that the vehicle was checked while on the road and taken into custody by the police. Reliance was placed upon the charge-sheet (Annexure "1") in that connection. In the charge-sheet it has been stated that on 26-1-1983 at about 10 A. M. the driver Ashok Kumar with a load of bricks in the truck was proceeding from the direction of Bithur towards Singhpur when the truck was stopped. The driver had no papers concerning the truck except his driving licence. Offences u/s 112, 123, 113 and 16/13 of the Act have been committed. In fact, the charge-sheet has been submitted under some other sections also i.e. Sections 38, 28 and 112 of the Motor Vehicles Act.

4. During the arguments the learned Counsel for the applicant conceded that the permit was upto 30-6-1981 only. This means that there has been no renewal of the permit of the truck for the subsequent period thereafter, it is urged on behalf of the applicant that the truck needed repairs and was moving from the garage and was not being plied on the road otherwise. So far as that submission is concerned, it would be found that in the charge-sheet itself it has been stated that the truck was loaded with bricks, which would mean that the truck was plying as a carrier transporting bricks. The case is pending and any question of facts would not be entered into by this Court.

5. It is being urged that there is no provision under which the vehicle could be seized by the police. So far as that aspect is concerned, Section 22 of the Motor Vehicles Act forbids driving of a motor vehicle at a public place for the purpose of carrying passengers or goods without proper registration and registration mark display. Section 38 of the Motor Vehicles Act, provides that a transport vehicle shall not be deemed to be validly registered for the purpose of Section 22 unless it carries a certificate of fitness in Form " H ". Section 129-A provides that the Police Officer may seize and detain the vehicle, if he has reasons to believe that it is being used in contravention of Section 22 or Section 42 of the Act. Section 42 expressly provides that no owner of a transport vehicle shall use or permit the use of the vehicle in any place save in accordance with the condition of a permit granted or counter-signed by the Regional or State Transport Authority. This would mean that a permit valid for the period in which the vehicle is plied on the road is a must. Section 112 of the Act provides for punishment of offences and lays down that if any provision of the Act or Rules are contravened and no punishment is otherwise provided, punishment may be awarded u/s 112 of the Act.

6. If a truck is plied on the road carrying goods without permit it can be seized by the police. In the present case the truck was seized on 26-1-1982, when any valid permit did not exist and, consequently, the truck was liable to seizure as such. In any case this Court will not encourage breach of the provisions of the Act. The truck in case of being released will again be on the road carrying goods.

My feeling at the same time is that the approach of the Magistrate is not correct as such. The proper course for him was to direct the applicant to first have her permit for the vehicle renewed and when the Regional Transport Officer or Authority concerned was, thus, approached, he could after hearing the parties also call for the payment of the dues in arrears. At the same time I feel that if there is a valid permit, the claim of the applicant for the release of the vehicle on such terms, regarding production of vehicle etc. as the subordinate court thinks fit, will have force. I am conscious that when the vehicle is at the Police Station while for the renewal of the permit the vehicle has to be checked and that may cause problems. But for that also there is a solution, either the Regional Transport Officer can depute his officials to the Police Station to check the vehicle regarding fitness or, if that is not possible, on any date fixed by the Regional Transport Officer the police can produce the vehicle there.

7. In the result, the application is only partly allowed and the aforesaid orders dated 14-3-1983, 16-4-1983, 19-4-1983, as well as the last order dated 22-8-1983 of the Magistrate are all set aside. The proper course for the applicant is to first have the permit renewed before the vehicle can be given in applicant's Supurdigi or released in her favour ; for which the Magistrate may be approached again after renewal of permit and this Court at this stage cannot release the truck in favour of the applicant in absence of any renewal of a valid permit. The applicant may apply to the Regional Transport Officer for the renewal of the permit, which may be considered on merits by the Regional Transport Officer expeditiously.