

(2004) 07 UK CK 0020

In the Uttarakhand High Court

Case No : Writ Petition No. 234 of 2003 (M/S)

Rajendra Kumar

APPELLANT

Vs

State of Uttaranchal and Another

RESPONDENT

Date of Decision : 31-07-2004

Acts Referred:

Arms Act, 1959 — Section 25

Penal Code, 1860 (IPC) — Section 147, 148, 149, 307

Uttar Pradesh Excise Act, 1910 — Section 72(2), 72(6), 72(7)

Citation : (2004) 07 UK CK 0020

Hon'ble Judges : Rajesh Tandon, J

Bench : Single Bench

Advocate : Rakesh Thapliyal, for the Appellant; Learned Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Rajesh Tandon, J.—Heard the learned Counsel for the parties.

2. By the present writ petition the Petitioner has prayed for a writ of certiorari quashing the judgment and order dated 13-3-2002 passed by the Addl. District Judge, Pauri Garhwal.

3. Brief facts giving rise to the present writ petition are that a F.I.R. was lodged by the Station House Officer, P.S. Kotdwar, District Pauri Garhwal on 7-8-99 against six accused persons for an offence u/s 147, 148, 149 and 307 I.P.C. read with Section 60/72 Excise Act, Section 3(1) of the Gangster Act as well as u/s 25 of Arms Act. In pursuance of the report dated 14-9-99 submitted by SHO, P.S. Kotdwar, the Collector issued a show cause notice to the Petitioner u/s 72(5) of Excise Act. However, on the objection by the Petitioner the notice was recalled and a fresh notice was issued and served upon the Petitioner. Thereafter case was proceeded u/s 72(5) of the Excise Act, against the Petitioner and the Collector passed an order on 26-6-2000 by which the vehicle of the Petitioner was confiscated. The Petitioner has preferred an appeal before the District Judge,

Pauri Garhwal. The appeal was admitted by the District Judge, Pauri Garhwal and transferred the same to the Additional District Judge, Pauri Garhwal. The Addl. District Judge has allowed the appeal and set aside the confiscation of the vehicle and remanded back the matter. The Petitioner has referred the notification dated 4-6-1978 by which appellate jurisdiction has been entrusted to the District Judge. The notification reads as under:

In exercise of the powers under Sub-section (7) of Section 72 of U.P. Excise Act, 1910 (U.P. Act No. IV of 1910) the Government is pleased to appoint District Judge as the appellate judicial authority in respect of the order of the confiscation passed by the Collector under Sub-section (2) of Sub-section (6) of Section 72 of the said Act.

4. The counsel for the Petitioner has also referred the judgment of Allahabad High Court in 1991 (28) ACC 487, Shiv Prasad v. State of U.P. and Anr. where it has been held that the District Judge is the appellate judicial authority and the appeal should have been disposed of by the District Judge himself.

5. After considering the submissions of both the parties, I find that the impugned order has been passed by the Additional District Judge, Pauri Garhwal, remanding the matter to the Collector to give proper notice to the Petitioner. Since the order has not been passed by a person termed as Judicial Authority under Sub-section (7) of Section 72 of the U.P. Excise Act, therefore, the order is without jurisdiction and cannot be upheld.

6. Consequently the matter is remanded back to the District Judge, Pauri Garhwal with a direction to hear the appeal himself and to pass the order in accordance with law, within a period of three months, after the receipt of the certified copy of this order.

7. The writ petition is allowed. No order as to costs.