

(2002) 10 AHC CK 0236
In the Allahabad High Court
Case No : Criminal Revision No. 1476 of 2002

Sahab Singh

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 09-10-2002

Acts Referred:

Essential Commodities Act, 1955 — Section 6C
Uttar Pradesh Excise Act, 1910 — Section 72, 72(7)

Citation : (2003) 1 ACR 12

Hon'ble Judges : Sushil Harkauli, J

Bench : Single Bench

Advocate : Ajay Kumar, for the Appellant;

Judgement

Sushil Harkauli, J.—Section 72 of U.P. Excise Act, 1910, provides for confiscation proceedings. The confiscation order can be passed by the Collector. Sub-section (7) of Section 72 of the Act provides that against the order of confiscation, appeal lies to such judicial authority as may be appointed in that behalf by the State Government. The State Government has appointed the "District Judge" to hear such appeals.

2. In the present case, the Petitioner had preferred an appeal before the District Judge which has been decided by the impugned order. Against the order of District Judge, the Petitioner has preferred this criminal revision u/s 397/401 of the Code of Criminal Procedure, 1973.

3. A criminal revision will lie only against orders passed by "Subordinate Criminal Courts" under the Code of Criminal Procedure. The question to be answered for considering the maintainability of this criminal revision, therefore, is whether the District Judge, passing an order in appeal u/s 72 (7) of the U.P. Excise Act, 1910, is exercising powers or working under the provisions of the Code of Criminal Procedure or not. There is nothing in the Act or the Rules to indicate that the procedure to be followed by the appellate authority will be the same as prescribed in the Code of Criminal Procedure.

4. There is a clear difference between "District Judge" and the "Sessions Judge". The decision of Supreme Court in the case of Thakur Das (Dead) by Lrs. Vs. State of Madhya Pradesh and Another, , which has held that criminal revision is maintainable against the order of Sessions Judge passed as the appellate authority u/s 6C of the Essential Commodities Act, 1955, is based upon the fact that Judicial Authority appointed u/s 6C was the "Sessions Judge". The use of the words "Single Judge" by the Government itself indicated that the Judicial Officer exercising power of Code of Criminal Procedure, has been nominated as the appellate authority.

5. The Code of Criminal Procedure uses the words "Sessions Judge" but instead of those words, in the Notification made by the Government under U.P. Excise Act the "District Judge" has been constituted the appellate authority.

6. Thus, I see no reason to hold either that the District Judge while acting as the appellate authority under U.P. Excise Act is a "Criminal Court" or that he is exercising powers under the Code of Criminal Procedure while deciding the appeal. In absence of either of these two things, criminal revision will not be maintainable against the order passed u/s 72 (7) of U.P. Excise Act, 1910.

7. Certain decisions which have been cited by the learned Counsel for the revisionist have been considered by me. In all of them, it has been assumed that criminal revision lies. This question has not been raised or decided as to whether criminal revision is maintainable under Cr. P.C., against an order passed u/s 72 (7) of the U.P. Excise Act.

8. Thus, I hold that criminal revision is not maintainable against such an order.

9. At this stage learned Counsel for the applicant has submitted that he wants to withdraw this criminal revision to avail such remedy as may be available to him. This criminal revision is accordingly dismissed as withdrawn.