

(2011) 08 AHC CK 0050
In the Allahabad High Court

Case No : Criminal Miscellaneous Writ Petition No. 15612 of 2011

Sanjiv Baliyan

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 11-08-2011

Acts Referred:

Uttar Pradesh Excise Act, 1910 — Section 60, 72, 72(2)

Citation : (2012) 1 ACR 135 : (2011) 9 ADJ 621 : (2012) 1 AWC 213(1)

Hon'ble Judges : S.C. Agarwal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.C. Agarwal, J.—Heard learned counsel for the petitioner, learned A.G.A. for the State and perused the record.

2. This writ petition has been filed with a prayer to quash the order dated 30.3.2011 passed by Addl. District Magistrate, Baghpat in case No. 38, State v. Sanjay Kumar and others u/s 60/72 (2) of the U.P. Excise Act, P.S. Chhaprauli, District Baghpat as well as order dated 28.7.2011 passed by Addl. District Judge (Special Judge), Baghpat in appeal No. 26 of 2011, Sanjiv Kumar v. State of U.P.

3. By impugned order dated 30.3.2011, A.D.M., Baghpat has confiscated the Bolero Vehicle No. UK-07 AA-7406 u/s 72 of the U.P. Excise Act (hereinafter referred to as "the Act"). Appeal filed by the petitioner (owner of the vehicle) has been dismissed.

4. Learned counsel for the petitioner submitted that at the time of confiscation, learned A.D.M. has not fixed any amount as fine to be paid in lieu of confiscation, as provided u/s 72 (2) of the Act and has left the matter to be decided by A.R.T.O. with a direction to the appellant to get the market value of the vehicle ascertained from A.R.T.O. concerned and to deposit the said amount within a month. The contention is that this is not the exact compliance of Section 72 (2) of the Act.

5. Learned A.G.A. is also unable to support the impugned order in this respect, but maintained that the vehicle has been rightly confiscated.

6. Section 72 sub-clause (2) of the U.P. Excise Act provides as under:

72. What things are liable to confiscation.--(2) Where anything or animal is seized under any provision of this Act and the Collector is satisfied for reasons to be recorded that an offence has been committed due to which such thing or animal has become liable to confiscation under sub-section (1), he may order confiscation of such thing or animal whether or not a prosecution for such offence has been instituted:

Provided that in the case of anything (except an intoxicant) or animal referred to in sub-section (1), the owner thereof shall be given an option to pay in lieu of its confiscation such fine as the Collector thinks adequate not exceeding its market value on the date of its seizure.

7. As per the provisions of Section 72 (2) of the Act, at the time of confiscation of the vehicle, the Collector is obliged to pass an order regarding payment of a fixed sum of fine to be paid by the owner in lieu of confiscation and such amount cannot exceed the market value of the vehicle on the date of its seizure. Therefore, the exercise of ascertaining the market value of the vehicle has to be done before passing the order for confiscation. Moreover, it is not necessary that the fine should be equivalent to the market value of the vehicle, but it shall not exceed the market value of the vehicle. The Collector is empowered to impose a lesser amount of fine in lieu of confiscation and such discretion should be exercised in a judicious manner. The maximum fine should be imposed only in extreme cases and not in a routine manner.

In these circumstances, the impugned order cannot be sustained and the matter deserves to be remanded to the Addl. District Magistrate, Baghpat for passing a fresh order in accordance with law. It is however made clear that this Court has not expressed any opinion on the merits of the case regarding forfeiture of the vehicle as to whether it was rightly forfeited or not.

Petition is allowed.

Impugned orders dated 30.3.2011 and 28.7.2011 are quashed.

The Addl. District Magistrate, Baghpat, on receipt of a copy of this order, shall decide the matter afresh after giving an opportunity to the petitioner and take a fresh decision u/s 72 of the Act expeditiously.