

(2013) 07 MP CK 0303

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 5148 of 2013

Shashwat M. Sharma

APPELLANT

Vs

State of Madhya Pradesh and Collector (Excise)

RESPONDENT

Date of Decision : 03-07-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Madhya Pradesh Excise Act, 1915 — Section 47B, 47C

Citation : (2013) 3 MPJR 203

Hon'ble Judges : Brij Kishore Dube, J

Bench : Single Bench

Advocate : R.K. Upadhyay, for the Appellant; Pramod Pachauri, Public Prosecutor for the State, for the Respondent

Judgement

Brij Kishore Dube, J.—This petition u/s 482 of Cr.P.C. is preferred by the petitioner for quashing the order dated 29.05.2013 passed by Sessions Judge, Shivpuri in Criminal Revision No. 55/2013 whereby the criminal revision filed by the petitioner has been dismissed on the ground of lack of territorial jurisdiction. Learned counsel for the petitioner submits that police Kolaras, District Shivpuri seized liquor alongwith the truck on 27.09.2011. The petitioner filed an application for releasing the liquor before the Collector (Excise), Shivpuri. The application was dismissed and an order for confiscation of the liquor was passed. Being aggrieved thereof, the petitioner preferred an appeal u/s 47-B of the M.P. Excise Act (hereinafter referred to as "the Act"), and the appeal was also dismissed, thereafter, the petitioner preferred revision before the Court of Sessions, Shivpuri against the order of Appellate Authority u/s 47-C of the Act. The Sessions Judge, Shivpuri holding that because the revision petition has been preferred against the order of Appellate Authority i.e., Excise Commissioner, Gwalior therefore, the revision will lie within the Sessions Division in which the Appellate Court i.e., the Excise Commissioner, Gwalior exists and on account of lack of territorial jurisdiction, the criminal revision was dismissed.

2. Learned counsel for the petitioner submits that analogy adopted by the learned Revisional Court is illegal, perverse and contrary to the spirit of Section 47-C of the Act. According to Section 47-C of the Act, the revision shall lie before the Sessions Division under which the alleged offence was committed. The word "within the sessions division" used in Section 47-C of the Act means the Sessions Division under which the offence has been committed and not the Sessions Division where the Appellate Authority is situated. Learned counsel has placed reliance upon the case of Vishnu Agrawal and Another Vs. State of Madhya Pradesh and Others, wherein, a Division Bench of this Court held as under:-

11. Undisputedly one of the order which was impugned in the Writ Court is the order of the Board of Revenue, which is within the territorial jurisdiction of this Bench and therefore, according to us if the order of the Board of Revenue as well has been challenged by filing Writ Petition under Article 226 of the Constitution of India before learned Single Bench of this Court, the part of cause of action also arose within the territorial jurisdiction of this Bench, and merely because the original order was passed by Collector of Stamps, Stana, which is outside the territorial jurisdiction of this Bench, would in itself is no ground to hold that this Bench is not having the territorial jurisdiction over the matter. Indeed, "cause of action wholly or on part thereof arises" can be looked upon from different angles and in this context we may also borrow sufficient light from section 20 of the CPC which speaks about the suit to be instituted where defendants reside or cause of action arises. u/s 20(C) of the CPC a suit can also be instituted at a place where the cause of action, wholly or in part, arises. Since the part of cause of action has arisen within the territorial jurisdiction of this Bench we are of the firm view that the writ petition was maintainable at this Bench.

3. Shri Pramod Pachauri, learned Public Prosecutor argued in support of the impugned order passed by the Court below.

4. Considered the rival submissions of the learned counsel for the parties and perused the record.

5. It is transpired from the record that on 27.09.2011, Police Kolaras, District Shivpuri received an information that in truck No. UA08-H-9518 liquor is being transported illegally. On the basis of the aforesaid information, the Police Kolaras, District Shivpuri stopped the truck and on checking found that the liquor was transported illegally, therefore, truck alongwith 300 dozen bottles of liquor was seized and the offence u/s 34(2) of the Act was registered at Crime No. 319/2011 against the accused persons.

6. The present petitioner moved an application for return/supurdigi of the liquor before the Collector (Excise), Shivpuri. The aforesaid application was dismissed on 16.04.2013 and an order for confiscation of the liquor was passed. Being aggrieved thereof, the petitioner filed an appeal u/s 47-B of the Act before the Appellate Authority i.e., Excise Commissioner, Gwalior. The Excise Commissioner, Gwalior vide its order dated 20.05.2013 dismissed the appeal. Against the said

order the present petitioner moved a revision before the learned Sessions Judge, Shivpuri under the provisions of Section 47-C of the Act. The Sessions Judge, Shivpuri vide the impugned order dismissed the revision for want of territorial jurisdiction. The impugned order reads as under:-

7. The aforesaid factual position is not disputed by the learned Public Prosecutor.

8. The only question for consideration before this Court is whether the dismissal of revision for want of territorial jurisdiction is in accordance with the provisions of Section 47-C of the Act?

9. Section 47-C of the Act provides as under:-

47-C. Revision before the court of sessions against the order of Appellate Authority - (1) Any party to appeal aggrieved by the final order by the Appellate Authority under sub-section (3) of Section 47-B may, within 30 days of such order submit a petition or revision solely on the ground of illegality of such order to the court of sessions within the sessions division.

(2) The Court of sessions may, if it finds any illegality in the order of the Appellate Authority, confirm reverse or modify the order passed by the Appellate Authority:

Provided that the Court of Sessions shall have no powers to stay the order of confiscation of the order passed by the Appellate Authority during pendency of the petition for revision before it.

(Emphasis supplied)

10. Admittedly, the alleged offence u/s 34(2) of the Act has been committed within the Sessions Division, Shivpuri. The application for return/supurdigi of the liquor has been preferred by the present petitioner before the Collector (Excise), Shivpuri. The aforesaid application was dismissed and an order for confiscation of liquor was passed by the Collector (Excise), Shivpuri. The aforesaid order was challenged by the petitioner by filing an appeal u/s 47-B of the Act, the appeal was also dismissed by the Excise Commissioner, Gwalior. Under these factual aspects which are not in dispute and in the light of the provisions of Sections 47-A to 47-D of the Act, it is apparent that the Sessions Judge, Shivpuri is having territorial jurisdiction over the matter and the criminal revision filed by the petitioner is maintainable. The learned revisional Court has committed an error in dismissing the revision petition holding that it is not having territorial jurisdiction to entertain the same. In view of foregoing, the impugned order dated 29.05.2013 passed by the learned Sessions Judge, Shivpuri is hereby set-aside and the case is remitted back to it with a direction to decide the matter on merits after hearing all the parties, in accordance with law.