

(1991) 03 AHC CK 0021
In the Allahabad High Court
Case No : Criminal Revision No. 380 of 1991

Shiv Prasad

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 06-03-1991

Acts Referred:

Uttar Pradesh Excise Act, 1910 — Section 72, 72(7)
Uttar Pradesh Excise Rules — Rule 134

Citation : (1992) 34 ACR 36

Hon'ble Judges : S.R. Bhargava, J

Bench : Single Bench

Advocate : G.N. Chandra, for the Appellant;

Judgement

S.R. Bhargava, J.—This revision has been heard on merit at this very stage and for avoiding further delay in the matter is being disposed of finally at this very stage

2. Revisionist preferred an appeal against the order of confiscation passed u/s 72 of the U.P. Excise Act. This appeal was admitted and was transferred to Addl. Sessions Judge, who took the view that appeals against the orders under the Act, as Rule 134 of the Rules framed under the Act presides lie to the Excise Commissioner. The learned Addl. Sessions Judge inferred want of jurisdiction and dismissed the appeal on that ground.

3. Against this, revisionist came to this Court.

4. Section 72(7) of the U. P Excise Act runs as under:--

Any person aggrieved by an order of confiscation Under Sub-section (2) or Sub-section (6) may, within one month from the date of communication to him of such order, appeal to such Judicial Authority as the State Government may appoint in this behalf and the Judicial Authority shall, after giving an opportunity to the Appellant to be heard, pass such order as it may think fit confirming, modifying or annulling the order appealed against.

5. It is no doubt true, Rule 134 provides appeals to the Excise Commissioner, but the Excise Commissioner cannot be a Judicial Authority. Hence, it is evident that the appeals u/s 72(7) are exception to Rule 134 and the learned Session Judge concerned should have noted the exception and probed the matter further. If he would have done so, he would have found that by Abkari Anubhag Notification No. 4986 (E)/XIII- 517, dated June 4, 1978, published in U.P. Gazette Extra dated 4th June. 1978 District Judge was appointed as Appellate Judicial Authority in respect of the order of confiscation passed by Collector Under Sub-section (2) and Sub-section (6) of Section 72 of the U.P. Excise Act.

6. I have carefully scrutinized the certified copy of the impugned order of the Lower Appellate Court. It is evident from the Notification that the appointed Appellate Judicial Authority is District Judge. An appeal to the District Judge should not have been heard or registered as Criminal Appeal. It should have been registered as Civil Appeal and should have been disposed by the District Judge himself. Whenever a Judicial Authority is appointed as persona Designata, hearing should be done by that Authority and as far as possible benefit of other Acts should not be taken.

7. For the reasons discussed above. I allow this revision at this very stage and set aside the impugned order. The appeal in question shall stand transferred back to the District Judge, Mirzapur, who shall dispose of the appeal himself according to law. The stay order dated 18-6-1988 is revived. It shall operate for two months and within that time District Judge shall endeavour to dispose of the appeal himself.

8. A copy of this order be issued to the counsel for the revisionist on payment of usual charges within 24 hours.