
(2007) 09 AHC CK 0234
In the Allahabad High Court
Case No : Criminal M.A. No. 3741 of 2007

Sukhraj Kaur

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 10-09-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2008) 1 ACR 189

Hon'ble Judges : Ravindra Singh, J

Bench : Single Bench

Advocate : Siya Ram Pandey, for the Appellant; A.G.A., for the Respondent

Judgement

Ravindra Singh, J.—The application u/s 482, Cr. P.C. has been filed by the applicant-Sukhraj Kaur with a prayer to quash the order dated 30.12.2006, passed by the Collector/District Magistrate, Muzaffarnagar in Case No. 6 of 2005-06 u/s 60/72 of Excise Act whereby the prayer for releasing the truck No. U.P. 14-J/9464 in Case Crime Nos. 485/486 of 2006, P. S. Meerapur, district Muzaffarnagar has been refused and order dated 1.2.2007 passed by Incharge District Judge/Special Judge/Addl. Sessions Judge whereby the appeal filed by the applicant has been dismissed. It is contended by learned Counsel for the applicant that the applicant filed the Criminal Appeal No. 6 of 2007 in the Court of learned Sessions Judge, Muzaffarnagar against the order dated 30.12.2006, passed by learned Collector / District Magistrate, Muzaffarnagar in Case No. 6 of 2005-06 u/s 60/72 of Excise Act, P. S. Meerapur, district Muzaffarnagar whereby the prayer for releasing the truck has been refused. But the learned Incharge Sessions Judge, Muzaffarnagar dismissed the appeal at the admission stage. The appeal has been dismissed without considering the merits of the case. The filing of the appeal is a legal right as provided by the Act. In such a situation, any order must be passed after perusing the record. The order must be on the merits of the case but in the present case the appeal has been dismissed without summoning and perusing the record and it has been dismissed at the admission

stage.

2. In reply of the above contention, it is submitted by learned A.G.A. that there is no illegality in the impugned order because the learned Incharge Sessions Judge has passed a reasoned order.

3. Considering the fact, circumstance of the case, submissions made by learned Counsel for the applicant, learned A.G.A. and from the perusal of the record it appears that from a Notification No. 4986 (E)/XIII-517-78 dated 4.6.1978 published in U.P. Gazette dated 4.6.1978 District Judge was appointed as Appealable Judicial Authority in respect of the order of confiscation passed by Collector under Sub-sections (2) and (6) of Section 72 of U.P. Excise Act, such appeal to the District Judge should have been registered as civil appeal, it should have been heard and disposed of by the District Judge himself because whenever a judicial authority is appointed persona designata the hearing should be done by that authority. In the present case the appeal has been registered as Criminal Appeal No. 6 of 2007 and it has been disposed of by Incharge Sessions Judge without considering the merits of the case, in such circumstances, the impugned order dated 1.2.2007 passed by learned Incharge Sessions Judge, Muzaffarnagar in Criminal Appeal No. 6 of 2007 is illegal and is hereby set aside. The matter is remitted to the Court of learned District Judge, Muzaffarnagar, who shall register it as civil appeal dispose of the appeal himself according to law, till the disposal of the appeal, the order dated 30.12.2006 in respect of the confiscation and auction shall not be given effect.

4. Accordingly this application is allowed.

5. Office is directed to communicate a copy of this order to the learned District Judge, Muzaffarnagar, within a week from today.