
(2011) 07 AHC CK 0100
In the Allahabad High Court
Case No : Criminal Revision No. 2399 of 2011

Vishal Gupta

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 12-07-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 401
Penal Code, 1860 (IPC) — Section 420, 467, 468, 471

Citation : (2011) 7 ADJ 103 : (2011) 7 RCR(Criminal) 2319

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

Bench : Single Bench

Final Decision : Allowed

Judgement

S.C. Agarwal, J.—Counter-affidavit filed by learned AGA is taken on record.

Heard Sri Anoop Trivedi, learned Counsel for the revisionist and learned AGA for the State.

2. This revision under Sections 397 and 401 Code of Criminal Procedure is directed against the order dated 12.5.2011 passed by the Judicial Magistrate, Court No. 2, Muzaffarnagar in Case Crime No. 66 of 2011, under Sections 420, 467, 468 and 471 Indian Penal Code & Sections 48, 50 and 52 of the VAT Act, P.S. Titabi, District-Muzaffarnagar, whereby the application for release of Tanker No. HR47A-8164 alongwith the diesel was rejected.

3. Learned Counsel for the revisionist submitted that the revisionist is the registered owner of the said tanker. The tanker was carrying 6000 diesel from Karnal to Roorki but it was seized by the police alongwith the diesel and the vehicle as well as the diesel be released in his favour.

4. Application for release was rejected by the Magistrate on the ground that the tanker was seized by team of Trade Tax Department and it was the case property. It was revealed on the basis of papers seized from the tanker that the tanker was carrying 12000 litres diesel from Karnal to Roorki on the basis of

Transit Declaration Form but at the time of inspection only 6190 litres diesel was found and remaining diesel was missing and this was done with intent to cause loss to the revenue, and payment of VAT has not yet been made.

5. Learned Counsel for the revisionist submits that culpability of the revisionist or the tanker driver would be determined during trial. The revisionist or the tanker driver have not been challaned under the provision of Essential Commodities Act but the case has been registered in respect of offence under the Indian Penal Code and the VAT Act. It is further submitted that keeping the tanker and the diesel at the police station for a long time is not going to serve any purpose and by the passage of time, the tanker and the diesel would be spoiled and the diesel may even evaporate causing national loss.

6. Per contra, learned AGA submits that illegal diesel was being transported without any valid license and without paying any trade tax.

Counter affidavit filed on behalf of the State is even contrary to the allegations made in the FIR wherein the prosecution case was that diesel was being transported on transit permit and less quantity of diesel was found. Ownership of diesel and tanker is not in dispute. The same may be case property but keeping" them at the police station for a long time is not going to serve any purpose. Diesel is a perishable item and tanker may rot with the passage of time. In these circumstances, the learned Magistrate was not justified in rejecting the application for release.

7. In *Sunder Bhai Ambalal Desai v. State of Gujrat* 2003 (46) ACC 223, the Apex Court held in para 14 of the judgment as follows:

In our view, whatever be the situation, it is of no use to keep seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles.

8. The instant case is squarely covered by the aforesaid Apex Court decision. The proceedings for confiscation or imposition of tax or the criminal proceedings may go on but pending trial, no useful purpose would be served by keeping diesel and the tanker at the police station.

In these circumstances, the learned Magistrate committed illegality in rejecting the application for release. The impugned order is illegal and cannot be sustained and is liable to be set aside.

The revision is allowed and impugned order dated 12.5.2011 is set aside. Learned Magistrate is directed to release the aforesaid vehicle as well as the diesel in respect of its owner on furnishing adequate security (except cash or bank guarantee).