Supreme Court of India
State(Gnct Of Delhi) vs Narender on 6 January, 1947
Author: C K Prasad
Bench: Chandramauli Kr. Prasad, Kurian Joseph

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.25 OF 2014
(@SPECIAL LEAVE PETITION (CRL.) NO. 8423 OF 2012)

STATE (NCT OF DELHI) … APPELLANT

VERSUS

NARENDER …RESPONDENT

J U D G M E N T

CHANDRAMAULI KR. PRASAD, J.

The State of Delhi, aggrieved by the order dated 28th of November, 2011 passed by the Delhi High Court in Criminal M.C. No. 2540 of 2011, whereby it had directed for release of the vehicle bearing Registration No. HR-56-7290 to the registered owner on security, has preferred this special leave petition.

Leave granted.

Shorn of unnecessary details, facts giving rise to the present appeal are that while constables Raghmender Singh and Sunil were on night patrolling duty at Kirari Nithari turn on 17th of April, 2011, they saw a vehicle coming from the side of the Nithari Village. Constable Raghmender Singh signalled the driver to stop the vehicle, but he did not accede to his command and turned the vehicle into the Prem Nagar Extension Lane. Both the constables chased the vehicle on their motorcycle and the driver of the vehicle, apprehending that he would be caught, left the vehicle and ran away from the place, taking advantage of the darkness. The vehicle abandoned by the driver was “Cruiser Force” and had registration No. HR-56- 7290. After opening of the windows of the vehicle, 27 Cartons, each containing 12 bottles of 750 ml. Mashaledar country-made liquor and 20 Cartons, each containing 48 quarters of Besto Whisky were found inside the vehicle. All the 47 Cartons were embossed with ‘Sale in Haryana only’. Constable Raghmender Singh gave a report to the police and on that basis FIR No. 112 of 2011 dated 17.04.2011 was registered at Aman Vihar Police Station under Section 33(a) and Section 58 of the Delhi Excise Act, 2009. During the course of investigation, Narender, respondent herein, claiming to be the owner of the vehicle, filed an

application for its release on security, before the Metropolitan Magistrate, Rohini, who, by his order dated 24th of May, 2011 rejected the same, inter alia, holding that he has no power to release the vehicle seized in connection with the offence under the Delhi Excise Act. The respondent again filed an application for the same relief i.e. for release of the vehicle on security before the Metropolitan Magistrate but the said application also met with the same fate. By order-dated 14th of July, 2011, the learned Metropolitan Magistrate declined to pass the order for release, inter alia, observing that any order directing for release of the vehicle on security would amount to review of the order dated 24th of May, 2011, which power the court did not possess.

Aggrieved by the same, the respondent filed an application before the High Court under Section 482 of the Code of Criminal Procedure (hereinafter referred to as 'the Code'), assailing the order dated 24th May, 2011 passed by the learned Metropolitan Magistrate. The High Court, by its impugned order dated 28th of November, 2011 directed the vehicle to be released in favour of the registered owner on furnishing security to the satisfaction of the Metropolitan Magistrate. While doing so, the High Court has observed as follows:

> ".....The vehicle in question was seized by the Police and not confiscated and if that was so, Section 58, Delhi Excise Act would not apply with regard to the vehicle in question and the procedure that was to be followed regarding the vehicle was to be found in Chapter VI of Delhi Excise Act and also Section 451, Cr.P.C....." Mr. Mohan Jain, Additional Solicitor General appears on behalf of the appellant whereas the respondent is represented by Mr. Harish Pandey. Mr. Jain submits that in view of the embargo put by Section 61 of the Delhi Excise Act, the High Court had no jurisdiction to pass an order for release of the vehicle on security. Mr. Pandey, however, submits that the High Court has the power under Section 451 of the Code to direct for release of the vehicle on security and the same is legal and valid.

Rival submissions necessitate examination of the scheme of the Delhi Excise Act, 2009 (hereinafter referred to as 'the Act'). Section 33 of the Act provides for penalty for unlawful import, export, transport, manufacture, possession, sale etc. of intoxicant and Section 33(a), which is relevant for the purpose reads as follows:

> "33. Penalty for unlawful import, export, transport, manufacture, possession, sale, etc.- (1) Whoever, in contravention of provision of this Act or of any rule or order made or notification issued or of any licence, permit or pass, granted under this Act-
>
> (a) manufactures, imports, exports, transports or removes any intoxicant;
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> xxx xxx xxx shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to one lakh rupees." Section 58 of the Act provides for confiscation of certain things and Section 58(d) thereof, with which we are concerned in the present appeal, reads as follows:

"58. Certain things liable to confiscation.- Whenever an offence has been committed, which is punishable under this Act, following things shall be liable to confiscation, namely-

xxx xxx xxx

(d) any animal, vehicle, vessel, or other conveyance used for carrying the same." From a plain reading of Section 33(a) of the Act, it is evident that transportation of any intoxicant in contravention of the provisions of the Act or of any rule or order made or notification issued or any licence, permit or pass, is punishable and any vehicle used for carrying the same, is liable for confiscation under Section 58(d) of the Act. Section 59 of the Act deals with the power of confiscation of Deputy Commissioner in certain cases. Section 59(1) thereof provides that notwithstanding anything contained in any other law where anything liable for confiscation under Section 58 is seized or detained, the officer seizing and detaining such thing shall produce the same before the Deputy Commissioner. On production of the seized property, the Deputy Commissioner, if satisfied that the offence under the Act has been committed, may order confiscation of such property. Therefore, under the scheme of the Act any vehicle used for carrying the intoxicant is liable to be confiscated and on seizure of the vehicle transporting the intoxicant, the same is required to be produced before the Deputy Commissioner, who in turn has been conferred with the power of its confiscation.

Section 61 of the Act puts an embargo on jurisdiction of courts, the same reads as follows:

"61. Bar of jurisdiction in confiscation.- Whenever any intoxicant, material, still, utensil, implement, apparatus or any receptacle, package, vessel, animal, cart, or other conveyance used in committing any offence, is seized or detained under this Act, no court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, have jurisdiction to make any order with regard to such property." According to this section, notwithstanding anything contrary contained in any other law for the time being in force, no court shall have jurisdiction to make any order with regard to the property used in committing any offence and seized under the Act.

It is relevant here to state that in the present case, the High Court, while releasing the vehicle on security has exercised its power under Section 451 of the Code. True it is that where any property is produced by an officer before a criminal court during an inquiry or trial under this section, the court may make any direction as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, as the case may be. At the conclusion of the inquiry or trial, the court may also, under Section 452 of the Code, make an order for the disposal of the property produced before it and make such other direction as it may think necessary. Further, where the

> property is not produced before a criminal court in an inquiry or trial, the Magistrate is empowered under Section 457 of the Code to make such order as it thinks fit. In our opinion, the general provision of Section 451 of the Code with regard to the custody and disposal of the property or for that matter by destruction, confiscation or delivery to any person entitled to possession thereof under Section 452 of the Code or that of Section 457 authorising a Magistrate to make an order for disposal of property, if seized by an officer and not produced before a criminal court during an inquiry or trial, however, has to yield where a statute makes a special provision with regard to its confiscation and disposal. We have referred to the scheme of the Act and from that it is evident that the vehicle seized has to be produced before the Deputy Commissioner, who in turn has been conferred with the power of its confiscation or release to its rightful owner. The requirement of production of seized property before the Deputy Commissioner under Section 59(1) of the Act is, notwithstanding anything contained in any other law, and, so also is the power of confiscation. Not only this, notwithstanding anything to the contrary contained in any other law for the time being in force, no court, in terms of Section 61 of the Act, has jurisdiction to make any order with regard to the property used in commission of any offence under the Act. In the present case, the Legislature has used a non-

obstante clause not only in Section 59 but also in Section 61 of the Act. As is well settled, a non-obstante clause is a legislative device to give effect to the enacting part of the section in case of conflict over the provisions mentioned in the non-obstante clause. Hence, Section 451, 452 and 457 of the Code must yield to the provisions of the Act and there is no escape from the conclusion that the Magistrate or for that matter the High Court, while dealing with the case of seizure of vehicle under the Act, has any power to pass an order dealing with the interim custody of the vehicle on security or its release thereof. The view which we have taken finds support from a judgment of this Court in the case of State of Karnataka v. K.A. Kunchindammed, (2002) 9 SCC 90, which while dealing with somewhat similar provisions under the Karnataka Forest Act held as follows:-

> "23…….The position is made clear by the non obstante clause in the relevant provisions giving overriding effect to the provisions in the Act over other statutes and laws. The necessary corollary of such provisions is that in a case where the Authorized Officer is empowered to confiscate the seized forest produce on being satisfied that an offence under the Act has been committed thereof the general power vested in the Magistrate for dealing with interim custody/release of the seized materials under CrPC has to give way. The Magistrate while dealing with a case of any seizure of forest produce under the Act should examine whether the power to confiscate the seized forest produce is vested in the Authorized Officer under the Act and if he finds that such power is vested in the Authorized Officer then he has no power to pass an order dealing with interim custody/release of the seized material. This, in our view, will help in proper implementation of provisions of the special Act and will help in advancing the purpose and object of the statute. If in such cases power to grant interim custody/release of the seized forest produce is vested in the Magistrate then it will be defeating the very scheme of the Act. Such a consequence is

to be avoided.

24. From the statutory provisions and the analysis made in the foregoing paragraphs the position that emerges is that the learned Magistrate and the learned Sessions Judge were right in holding that on facts and in the circumstances of the case, it is the Authorized Officer who is vested with the power to pass order of interim custody of the vehicle and not the Magistrate.

The High Court was in error in taking a view to the contrary and in setting aside the orders passed by the Magistrate and the Sessions Judge on that basis." From a conspectus of what we have observed above, the impugned order of the High Court is found to be vulnerable and, therefore, the same cannot be allowed to stand.

To put the record straight it is relevant here to state that the counsel for the respondent had not, and in our opinion rightly, challenged the vires of the provisions of the Act in view of the decision of this Court in the case of Oma Ram v. State of Rajasthan, (2008) 5 SCC 502, which upheld a somewhat similar provision existing in the Rajasthan Excise Act.

In the result, we allow this appeal, set aside the impugned judgment and order of the High Court and hold that the High Court exceeded in its jurisdiction in directing for release of the vehicle on security.

.....J.

(CHANDRAMAULI KR. PRASAD) .....J.

(KURIAN JOSEPH) NEW DELHI, JANUARY 06, 2014.
