

(2007) 02 AHC CK 0234

Allahabad High Court

Case No: Criminal M.W.P. No. 2285 of 2007

Ravindra Nath Yadav

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: Feb. 21, 2007

Acts Referred:

- Constitution of India, 1950 - Article 226
- Criminal Procedure Code, 1973 (CrPC) - Section 451, 457
- Karadhan Adhiniyam, 1997 - Section 22
- Motor Vehicles Act, 1988 - Section 207(1)

Citation: (2007) 2 ACR 1683

Hon'ble Judges: Poonam Srivastava, J

Bench: Single Bench

Advocate: Hemant Kumar and Pravin Kumar Srivastava, for the Appellant; A.G.A., for the Respondent

Final Decision: Disposed Of

Judgement

Poonam Srivastava, J.

Heard Sri Hemant Kumar, learned Counsel for the Petitioner and learned A.G.A. for the State.

2. The orders dated 18.10.2006, passed by the Additional Chief Judicial Magistrate 1st, Jaunpur and 20.1.2007, passed by the Additional Session Judge, Court No. 2, Jaunpur, are impugned in the instant writ petition.

3. The grievance of the Petitioner is that his vehicle (Jeep) No. U.P. 62C/5988 has been refused to be released in his favour which was taken into custody by the Respondent No. 2, Assistant Regional Transport Officer, Jaunpur on 20.9.2006. The Petitioner claims himself to be owner of the aforesaid jeep which was registered in the transport department. A permit was issued for commercial purposes. The

vehicle was surrendered on 31.12.2002, after payment of all taxes in lieu of the permit issued and a receipt was given by the Taxing Officer Transport Officer, Jaunpur, a copy of which is annexed as Annexure-2 to the writ petition. Thereafter, the vehicle was being used for private work by the Petitioner. The transport department intercepted the vehicle within the jurisdiction of police station Machhali Shahar on the ground that the vehicle was not registered and driver did not possess driving licence and it was plying without a valid permit.

4. Learned Counsel for the Petitioner has stated in paragraph 5 of the writ petition that the vehicle was registered and was being driven by Ashok Kumar Yadav who had valid licence. A copy of the licence is annexed as Annexure-4 to the writ petition. Since the permit was surrendered on 31.12.2002, the Petitioner was not required on the date and time when the vehicle was seized to have a valid permit and, therefore, seizure and its consequent detention is illegal. An application u/s 457, Cr. P.C. for release of the vehicle was moved before the A.C.J.M. 1st, Jaunpur on 28.9.2006. A report was called for from the Transport Authority which was submitted on 5.10.2006. The report has also been brought on record as Annexure-6 to the writ petition. The report clearly stated that the permit and other documents relating to its commercial use was already deposited with the Taxing Officer Transport Department, Jaunpur on 31.2.2002. The learned Magistrate rejected the application as not maintainable vide order dated 18.10.2006, which is annexed as Annexure-7 to the writ petition. Perusal of the said order shows that there was some report of A.R.T.O., Jaunpur dated 17.10.2006, to the effect that the vehicle was registered as Jeep Maxi Cab Public Vehicle and Rs. 1,87,538 is arrears towards tax. No challani report was received in the court of Chief Judicial Magistrate till date, the order was passed and the vehicle was seized u/s 207(1) M.V. Act and u/s 22 of Karadhan Adhiniyam, 1997. A revision filed against the said order was also dismissed.

5. The submission is that the vehicle has been seized since the month of September, 2006. It is standing at the concerned police station unattended and a number of parts are already missing.

6. After hearing the learned Counsel for the Petitioner and learned A.G.A. and considering the entire documents on record, it is evident that no proceedings for recovery of any tax has been initiated, neither any notice has been served on the Petitioner till date, on the contrary, a report was submitted from the office of A.R.T.O. that the permit and other documents relating to its commercial use was already deposited with the Taxing Officer Transport Department, Jaunpur on 31.2.2002.

7. In the case of Jugal Kishore and Ors. v. State of U.P. and another, 1994 A.C.J. 1030, it was held that the Magistrate will have jurisdiction to release the vehicle pending trial u/s 451, Cr. P.C. Assuming the jurisdiction is not with the Magistrate for release of article, even then the Division Bench in the case of Jugal Kishore (supra) has ruled that: "If the vehicle is not released temporarily the police officer or person

authorized has to decide the question as to whether the owner has committed any offence or the offence is to be compounded. This exercise has also to be completed within reasonable period of time. When the police officer or authorized person does not release the vehicle so seized on being satisfied that an offence has been committed or refuses to compound the offence, he is duty bound to complete the investigation/ inquiry within a reasonable time what is a reasonable time in a given case would depend on the peculiar facts and circumstances of that case and to file a complaint before the Magistrate competent to try the case and the Magistrate on the complaint being so laid before him would have the jurisdiction to release the vehicle pending trial as provided u/s 451, Cr. P.C. and later on to pass an order as to the final disposal of the vehicle as provided u/s 451, Cr. P.C. at the conclusion of the trial. If the complaint is not laid before the Magistrate within a reasonable time it is always open to the owner of the vehicle to approach the Court under Article 226 of the Constitution. The Petitioners in all the writ petitions can have their remedy under the law in the light of our foregoing observations. In the end we direct the Respondents to act in accordance with the observations made in this judgment.

8. Reliance has also been placed on a decision of the Apex Court in the case of *Sunder Bhai Ambalal Desai v. State of Gujarat*, (VIL) 2003 ACC 223, where the Hon'ble Supreme Court has clearly held that the powers u/s 451, Cr. P.C. should be exercised expeditiously and judiciously. It would serve various purposes: (i) Owner of the article would not suffer because of its remaining unused, (ii) Court or the police would not be required to keep the article in safe custody, (iii) If a proper panchnama before handing over article is prepared, that can be used in evidence instead of its production before the Court during the trial, if necessary, (iv) This jurisdiction of the Court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles. The Apex Court has clearly held that appropriate orders should be passed immediately because keeping it at police station for a long period would only result in decay of the article. The Court should ensure furnishing of adequate bond, guarantee or security in accordance with facts and circumstances of each case. Several other decisions have been brought before the Court in support of Petitioners' contention, where the courts have considered the release of goods on the principle laid down in the case of *Sunder Bhai Ambalal Desai* (supra) to ensure that no loss is caused to its owner on account of continuous detention.

9. In the present case, admittedly the owner of the vehicle is not an accused in any criminal case and it is also not disputed that the vehicle which is standing at the police station, will lose its value for want of proper care and attention.

10. After hearing the learned Counsel for the Petitioner and learned A.G.A. and also going through two orders, I am satisfied that the courts below did not consider the fact that no fruitful purpose will be served by keeping the vehicle at the police station for an indefinite period. The order refusing its release has been passed

merely because the criminal proceedings are pending. Another reason for which the release has been declined, is that the Court has no jurisdiction to order release. It is the State Government alone which can direct for its release. In an eventuality as the instant one, it cannot be said that the owner is remediless, recourse to Article 226 of the Constitution is always available. In view of the decision of the Apex Court and principles followed by Division Bench of this Court in the case of Jugal Kishore (supra), I dispose of this writ petition with the direction to the concerned Magistrate to pass appropriate orders for release of the disputed vehicle in favour of the owner after taking adequate security to his satisfaction and also an undertaking that the vehicle will not be disposed of during pendency of the proceedings. In case the Chief Judicial Magistrate, Jaunpur, is of the view that the Assistant Regional Transport Officer, Jaunpur, Respondent No. 2, is the appropriate authority for its release, the Petitioner is permitted to move an application before the Assistant Regional Transport Officer, Jaunpur, for its release and direction in this order shall be followed by the Assistant Regional Transport Officer, Jaunpur, as well and appropriate orders be passed for release of the vehicle within a period of three weeks from the date a certified copy of this order is produced before him. With the aforesaid observations, this writ petition is finally disposed of.