

(2005) 09 AHC CK 0295

Allahabad High Court

Case No: Criminal Miscellaneous Application No. 13167 of 2005

Kishan Lal and Navin Kumar Jain

APPELLANT

Vs

State of Uttar Pradesh and O.P.
Ratoori, Assistant Commissioner,
Sales Tax

RESPONDENT

Date of Decision: Sept. 15, 2005

Acts Referred:

- Criminal Law (Amendment) Act, 1932 - Section 7
- Criminal Procedure Code, 1973 (CrPC) - Section 205, 317, 451
- Penal Code, 1860 (IPC) - Section 120B, 332, 353, 419, 420

Citation: (2005) CriLJ 227 : (2006) 2 RCR(Criminal) 39

Hon'ble Judges: Poonam Srivastava, J

Bench: Single Bench

Advocate: Dilip Kumar and Rajiv Gupta, for the Appellant; A.G.A., for the Respondent

Final Decision: Allowed

Judgement

Poonam Srivastava, J.

Heard learned counsel for the applicants and learned A.G.A. for the State.

2. This application has been filed for quashing the charge sheet No. 8/2005 dated 23.1.2005 and also the order dated 15.2.2005 whereby cognizance was taken and summons u/s 424 I.P.C. has been issued against the applicants in case crime No. 474 of 2004 Police Station Brindava Mathura. The second prayer is that for quashing the order dated 17.2.2005 passed by the Chief Judicial Magistrate, Mathura refusing to release the goods loaded in the Truck No. HR-38D/8271, which was taken into custody on 12.12.2004 in connection with case crime No. 474 of 2004 under Sections 332, 353, 419, 420, 481, 482, 467, 468, 120B I.P.C. and Section 7 Criminal Law Amendment Act, Police Station Brindavan, District Mathura. This order has been confirmed in revision by the Additional Sessions Judge, Mathura in criminal revision

No. 83 of 2005 vide judgment dated 18.8.2005.

3. I have gone through the First Information Report and charge sheet. I do not find it a fit case for quashing the charge sheet and impugned order. A bare reading of the documents, prima facie makes out a case against the applicants. In the circumstances, The applicants are permitted to appear through counsel and claim discharge at the appropriate stage, and the courts below shall decide the said application, in accordance with law, after affording opportunity of hearing to the parties, by a reasoned order. However, in case the applicants appear within fifteen days from today and move an exemption application u/s 205/317 Cr.P.C., (as the case may be) personal appearance of the applicants shall not be compelled during pendency of the application for discharge moved on behalf of the applicants. The court shall take an undertaking from the applicants that they will appear on such dates as and when the court requires their presence. Till the application for discharge is finally decided, no coercive measures shall be taken against them.

4. The prayer in respect of rejection of the application u/s 451 Cr.P.C. is being considered and the matter is being disposed of finally on the agreement between counsel for the applicants and learned A.G.A. for the State. Sri Dilip Gupta, learned counsel appearing for the applicants has argued that Truck No. HR-38D/8271 has already been released but the goods were not released on a baseless reason. I have perused the order dated 17.2.2005 passed by the Magistrate. A copy of the same has been annexed as annexure No. 7 to the affidavit filed in support of this application. Only reason for declining to release the goods loaded in the Truck is that some trade tax is payable by the applicants and, therefore, it was not released. I have gone through the First Information Report, which does not show that any misappropriation of the trade tax has been alleged in the report. On the contrary, the First Information Report was registered under Sections 332, 353, 419, 420, 481, 482, 467, 468, 120B I.P.C. and Section 7 Criminal Law Amendment Act. In the circumstances, there is no allegation of misappropriation of the trade tax, therefore, argument of counsel for the applicants appears to be sound. The release could not be refused on the ground of non payment of trade tax. Assuming trade tax is due, it is the Trade Tax Department, which shall initiate proceedings but the goods, which are perishable items cannot be kept in custody till conclusion of the trial. The Apex Court in the case of Sundaerbhai Ambalal Desai v. State of Gujarat AIR 2003 SC page 638. has held that powers u/s 451 Cr.P.C. should be exercised expeditiously and judicially, it would serve various purposes, namely:

(1) Owner of the article would not suffer because of its remaining unused or by its misappropriation; (2) Court or the police would not be required to keep the article in safe custody; (3) If the proper panchnama before handing over possession of article is prepared, that can be used in evidence instead of its production before the Court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and (4) 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.

5. Looking to the facts and circumstances of the case, and the principles enunciated by the Apex Court, I allow this application in so far it relates to refusal to release the goods loaded in the Truck vide order dated 17.2.2005 confirmed in revision on 18.8.2005. These judgment and orders are set aside and the Magistrate is directed to release the goods taken into custody in connection with case crime No. 474 of 2004 under Sections 332, 353, 419, 420, 481, 482, 467, 468, 120B I.P.C. and Section 7 Criminal Law Amendment Act, Police Station Brindawan, District Mathura after taking adequate security for releasing the goods, other than bank and cash guarantee. The question of trade tax will be considered by the Trade Tax Department as no provision of Trade Tax Act is shown to be violated and the charge sheet has not been submitted under provision of Trade Tax, it is only u/s 424 I.P.C.