



UPLL010000772023

In The Court of District Judge, Lalitpur

Presiding Officer- (SHRI CHANDRODAY KUMAR H.J.S.) UP06553

Miscellaneous Civil Appeal No. 02 of 2023

**Babulal Lakhera Age About 71 Years S/o Shri Ferran Singh R/o
Bilgaiya Ward Bina, Police Station Bina, District Sagar, Madhya
Pradesh -----Appellant**

versus

**1. State of U.P. through District Magistrate, Lalitpur-Respondent
2. Bhagat Singh alias Buntty Rai S/o Shri Nandu Singh Rai, R/o
Village Piraunda Police Station Kotwali Bina, District Sagar,
Madhya Pradesh --Proforma Respondent**

**Under section 72(7), U.P. Excise Act,
Police Station Pali**

Judgement

Mr Babulal, the appellant, has filed this Miscellaneous Civil Appeal contesting the order dated 17th December 2022 passed by the learned Collector of Lalitpur in Case No. 1208/2021, Computerized Case No. D 202106450001208: State v. Bhagat Singh alias Banti Rai. The learned Collector, having dismissed the objections made by the appellant/vehicle owner, proceeded to confiscate the vehicle under section 72(7) of the Excise Act.

2- The facts are that on the 30th of May 2021, Senior Sub-Inspector Harish Singh was conducting a patrol at the Range Post trifurcation when he received information from an informant indicating that an individual driving a red Maruti Brezza car going transport boxes of English liquor towards Bangaria. The police acted promptly on this intelligence and stopped the car, arriving at the abovementioned location at 19:35 pm. Upon conducting an internal search of the vehicle with registration number MP15CB6434, three cartons containing 36 bottles of Royal Stag and one carton containing 12 bottles of Blenders Pride, a total of 36 litre English wine in four sacks were discovered from the boot space. The car and the recovered liquor were subsequently taken into custody, and the driver, who identified himself as Bhagat Singh alias Buntty Rai, was arrested. A recovery cum seizure cum arrest memo was prepared on the spot, which served as the basis for lodging an FIR at Case Crime No. 57 of 2021 under sections 60 and 72 of The Excise Act.

3- Seizing Officer Sub Inspector Brijesh Kumar submitted a report on 1st June 2021 to confiscate a seized vehicle with registration number MP15CB6434. The report included a copy of the FIR and a photo of the seized vehicle, which was sent to the learned District Magistrate (Collector) through the official channel. The learned District Magistrate (Collector) issued a first show cause notice to Bhagat Singh, aka Buntty Rai, the vehicle's driver, on 25th June 2021. A second show cause notice was issued to Babu Lal Lakhera, the car's owner, on 9th August 2021. During this time, ARTO Lalitpur submitted a report on 16th June 2021, which provided details regarding the ownership and valuation of the car. It showed that Babu Lal Lakhera owned the vehicle, and its value was Rs. 6,30,000.

4. The owner and driver of the said car responded and filed their separate objections, wherein the owner stated that the driver took the car to take family members to worship the deity. Police falsely implicated his car in refusing to fulfil the demand for money. The owner and the driver filed their evidence in the form of affidavits in which the same things have been said as in their objections.

5. Rejecting the objections and evidence of the owner, the learned Collector/District Magistrate passed the confiscation order, giving the option of deposition of a fine of Rs. 6,30,000 in lieu of confiscation.

6. The District Magistrate and the learned Collector are the same person; hence, issuing notice by designation of District Magistrate is merely an irregularity that does not go to the root of the case. The seizing officer reported confiscation to the authorities through official channels within three days. No binding time is prescribed for the confiscating authority to act on the report.

7. The only defence to the owner is that the liquor was carried without his knowledge, but he has not pleaded it specifically; instead, he said that the driver took the car to take family members to worship the deity. It is possible that the owner may have consented to both, i.e. to take family members to worship the deity and carry liquor. Since the owner does not deny that he was not permitted the driver to carry liquor and that the recovered liquor was carried without his knowledge, the finding of the learned Collector is not perverse. The car is perishable in nature; hence, the finding of the car's auction is also not bad in the eyes of the law. The appeal is liable to be rejected. However, in the light of para 12, 18 and 27 of the Order/Judgement dated 19.10.2023 passed by Hon'ble The High Court of Judicature at Allahabad in Writ - C No. 9234 of 2023: Vikram Kumar Singh v. State of UP, the Learned Collector may be directed to release the vehicle on depositing half of the fine and furnishing a surety or bond for rest half of the fine by the vehicle owner within one month if the vehicle is found to be a transport vehicle. In default, the learned Collector will be free to auction the vehicle.

ORDER

The appeal is rejected. However, in the light of para 12, 18 and 27 of the Order/Judgement dated 19.10.2023 passed by Hon'ble The High Court of Judicature at Allahabad in Writ - C No. 9234 of 2023: Vikram Kumar Singh v. State of UP, the Learned Collector is directed to release the vehicle on depositing half of the fine and furnishing a surety or bond for rest half of the fine by the vehicle owner within one month if the vehicle is found to be a transport vehicle. In default, the learned Collector will be free to auction the vehicle.

Date: 12.12.2023

(Chandroday Kumar)
District Judge,
Lalitpur

This judgment is signed, dated, and pronounced today in open Court.

Date: 12.12.2023

(Chandroday Kumar)
District Judge,
Lalitpur
