

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

CRA-S-1928-SB-2004

Date of decision: 19.02.2015

Joginder Singh and another

..... Appellants

Versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

1. Whether Reporters of the local papers may be allowed to see the judgment ? Yes
2. To be referred to the Reporters or not ? Yes
3. Whether the judgment should be reported in the Digest ? Yes

Present: Mr.Saurabh Bhardwaj, Advocate for the appellants.

Mr.Mukesh Kaushik, Deputy Advocate General
for the State of Haryana.

DARSHAN SINGH, J.

Present appeal has been preferred by appellants Joginder Singh and another, the registered owners of Ambassador car bearing registration No.HRL-4786 against the order dated 22.09.2004, vide which the car in question was ordered to be confiscated under Section 60 (3) of the the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter called the 'Act')

2- The brief facts, giving rise to the impugned order, are that

the aforesaid Ambassador car was used in carrying three gunny bags containing 38 Kg. poppy husk each on 24.09.2000 and as a result of which, a case bearing FIR No.100 dated 24.09.2000, under Section 15 of the Act was registered at Police Station Jhansa against Sanjay Kumar, who was driving the said car and Balbir Singh, who travelling in the said car. Both of them were held guilty and convicted by the Judge, Special Court, Kurukshetra vide judgment dated 01.12.2003. While disposing of the said case, the learned trial Court ordered for initiating the proceedings for confiscation of the car in question as contemplated under Section 60 of the Act.

3- The show cause notice under section 60 of the Act was served upon both the appellants.

4- The appellants filed the written reply to the show cause notice alleging therein that they are using the car in question for their personal use and some time they use this car through driver Sanjay Kumar on some booking from Taxi Stand, Karnal for carrying the passengers. They never allowed Sanjay Kumar to use the car for carrying contraband and substance for the wrongful purpose. On 24.09.2000, Sanjay Kumar driver took the car from Karnal to village Hinga Kheri without their permission and knowledge, as they were busy in 'Akhand Path' at the house of Joginder Singh. They only came to know after the arrest of Sanjay Kumar and Balbir Singh that they were carrying the contraband in the said car. They further pleaded that driver Sanjay Kumar drove the said car with contraband without their consent and

permission. They are innocent. Hence, the notice may be withdrawn.

5- After considering the plea raised in the reply to the show cause notice, the learned Judge, Special Court, Kurukshetra passed the impugned order confiscating the said vehicle.

6- Aggrieved with the said order, present appeal has been preferred.

7- I have heard Mr.Saurabh Bhardwaj, Advocate, learned counsel for the appellants, Mr.Mukesh Kaushik, learned Deputy Advocate General for the State of Haryana and have carefully gone through the record.

8- Learned counsel for the appellants contended that the appellants were not at fault. Sanjay Kumar had carried the car without permission and knowledge of the appellants on 24.09.2000. The appellants only came to know about the transportation of the contraband when Sanjay Kumar and his co-accused Balbir Singh were apprehended by the police. The appellants are innocent and have nothing to do with the transportation of the contraband. So, no ground is made out for the confiscation of their vehicle.

9- On the other hand, learned Deputy Advocate General for the State of Haryana pleaded that three bags containing 38 Kg. poppy husk each were recovered from the car in question. So, there is no illegality in the impugned order passed by the learned trial Court.

10- I have duly considered the aforesaid contentions.

11- Section 60 (3) of the Act reads as under:-

“60. Liability of illicit drugs, substances, plants, articles and conveyances to confiscation.-

(1) xx xx xx

(2) xx xx xx

(3) Any animal or conveyance used in carrying any narcotic drug or psychotropic substance [or controlled substances], or any article liable to confiscation under sub-section (1) or sub-section (2) shall be liable to confiscation, unless the owner of the animal or conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person-in-charge of the animal or conveyance and that each of them had taken all reasonable precautions against such use.”

12- The aforesaid provision shows that sub-section (3) of Section 60 of the Act has been enacted primarily to stop the illegal activities of transporting narcotic drugs and psychotropic substances. The registered owners of the vehicle can only claim the relief if they are able to bring their case in the exception provided in the aforesaid provision itself.

13- The said exception must relate to the innocence not only to the owner but also to his agent and the person, who has been put in charge of the said conveyance. If one has to come within the exception, he will have to prove not only his innocence but also that all such possible precautions against wrongful use of the vehicle had been taken by the registered owner, his agent and the person in charge of the conveyance. It would not be enough simply to allege that the registered owner had no hand in the illegal use of the vehicle. The enactment of the Legislature in this regard is purposeful. If that would not have been so,

any person would allow the vehicle to be used for illegal purposes contemplated under the Act and still claim the vehicle by pleading that he had no knowledge of the misuse thereof. Thus, mere this plea that appellants had no knowledge that the contraband was being carried in their car, is of no help to the appellants to assail the impugned order. To support this view, reference can be made to case **Ganga Hire Purchase Pvt. Ltd. Vs. State of Punjab AIR 2000 SC 449.**

14- In the instant case, it is the admitted case of the appellants that Sanjay Kumar was employed as a driver by the appellants for plying the car as a taxi to carry the passengers. It is not disputed that even on 24.09.2000, the car in question was in his possession in that capacity. Said Sanjay Kumar along with his co-accused Balbir Singh was found transporting the contraband in the said car and was ultimately convicted vide judgment dated 01.12.2003. As already mentioned, accused Sanjay Kumar, who was employed by the appellants as driver of the vehicle, was their agent and the person in charge of the conveyance, what to talk of taking of reasonable precautions against the illegal use of vehicle, he himself indulge in transporting the contraband. So the appellants have failed to bring their case under the exception of Section 60(3) of the Act.

15- Thus, I do not find any illegality in the impugned order passed by the learned trial Court for the confiscation of the car bearing registration No.HRL-4786.

16- Consequently, the present appeal is without any merits

and the same is hereby dismissed.

Dated: 19.02.2015
sunil yadav

(DARSHAN SINGH)
JUDGE