

In the High Court of Punjab and Haryana at Chandigarh

CRM-M-29267 of 2013

Date of Decision:22.1.2015

Amandeep Sharma

---Petitioner

versus

State of Punjab

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.P.S.Khurana, Advocate
for the petitioner

Mr.Ankur Jain, AAG, Punjab
for the respondent-State

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

REKHA MITTAL, J.

The present petition under Section 482 of the Code of Criminal Procedure lays challenge to orders dated 29.11.2012 (Annexure P-4) and dated 25.4.2013 (Annexure P-8) declining prayer of the petitioner for release of Motor Cycle No. PB-05N 8402.

Counsel for the petitioner contends that the petitioner is the registered owner of motor cycle bearing No.PB-05N 8402. The said vehicle was stolen on 11.1.2012 at about 8-00 p.m. while it was parked by him outside the motor exchange, Jalalabad. The petitioner reported the matter to the police of Police Station, Jalalabad on 12.1.2012 and DDR No.

22 dated 15.1.2012 was recorded. In July 2012, the petitioner came to know that his motor cycle has been taken into custody by the police of Police Station Fazilka in case FIR No. 33 dated 6.3.2012 registered under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short “the Act”) against Kashmir Singh and Nishan Singh who were found in possession of 12 kgs of poppy husk. He filed an application for release of vehicle on sapurdari before the Special Judge, Ferozepur which was allowed vide order dated 21.9.2012. Before the petitioner could furnish the necessary bonds for securing release of the vehicle, the accused in FIR No. 33 dated 6.3.2012 were convicted and case property including the vehicle was ordered to be confiscated to the State vide judgment dated 29.11.2012.

It is argued that before passing the order confiscating the vehicle in question which was earlier ordered to be released on sapurdari to the petitioner, no notice or opportunity of hearing was given to him and therefore, a serious prejudice has been caused to the petitioner as his motor cycle has been confiscated to the State without any fault attributable to him. It is further submitted that in view of provisions of Section 60 of the Act, the petitioner is entitled to be heard in the matter before making him to suffer.

Counsel for the State of Punjab has fairly conceded that the petitioner lodged information with the police that his motor cycle has been stolen and on the basis of said information, FIR No. 04 dated 9.1.2012 under Section 379 IPC was registered in Police Station, Jalalabad against an unknown person. It has further been admitted that later the said motor cycle was recovered from the accused in FIR No. 33 dated 6.3.2012 under Section

15 of the Act registered in Police Station, Sadar Fazilka. He has further admitted that the petitioner was owner of the motor cycle Hero Honda Splendor as per registration certificate (Annexure P-1). He has not disputed that the petitioner was not given an opportunity of being heard before the motor vehicle was ordered to be confiscated to the State.

I have heard counsel for the parties and perused the records.

The petitioner filed an application for release of vehicle in question on sapurdari which as a matter of fact was allowed in his favour but the petitioner failed to comply with the conditions imposed by the court and, therefore, he could not recover possession of the vehicle. However, it remains a fact that the petitioner did not get an opportunity of being heard before the trial court before the vehicle was ordered to be confiscated while recording a verdict of guilt against the accused involved in FIR No. 33 dated 6.3.2012.

Section 60 of the Act deals with liability of illicit drugs, substances, plants, articles and conveyances to confiscation. Sub Section 3 of Section 60 provides for confiscation of any animal or conveyance used in carrying any narcotic drug or psychotropic substance, or any article liable to confiscation. A relevant extract from sub section 3 of Section 60 of the Act, germane to the controversy is extracted below:-

“any animal or conveyance used in carrying any narcotic drug or psychotropic substance, 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.”

A plain reading of the aforesaid extract makes it manifest that any animal or conveyance used in carrying any contraband shall be liable to confiscation unless the owner thereof proves that it was so used without his knowledge or connivance. In the case at hand, the petitioner-registered owner of the vehicle did not get an opportunity to prove that he did not have necessary knowledge nor connived with the accused for user of the vehicle in carrying suspect material, therefore, the order passed by the trial court is against the principles of natural justice and can not be allowed to sustain.

In view of what has been discussed hereinabove, the order dated 29.11.2012 passed by the Special Judge, Ferozepur to the extent of confiscation of vehicle in question is set aside with a direction to the trial court to pass the order afresh after providing an opportunity of hearing to the petitioner.

Parties through their counsel are directed to appear before the Special Judge, Ferozepur on 24.2.2015. The Special Judge, Ferozepur shall dispose of the matter within a period of four months from the date of parties putting in appearance before the Court.

(REKHA MITTAL)
JUDGE

22.1.2015
PARAMJIT