

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-37454-2014

Date of decision: 28.07.2015

Gulzar Singh

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Akshay Jindal, Advocate
for the petitioner.

Ms. Anmol Grewal, AAG, Punjab.

1. Whether reporters of local papers may be allowed to see the judgment? YES/NO
2. To be referred to the reporters or not? YES/NO
3. Whether the judgment should be reported in the digest? YES/NO

RAMESHWAR SINGH MALIK, J.

Petitioner, by way of instant petition under Section 482 of the Code of Criminal Procedure ('Cr.P.C.' for short), seeks quashing of the impugned order dated 07.10.2014 (Annexure P-3) passed by learned Presiding Officer, Special Court, SAS Nagar (Mohali), whereby release of the car bearing registration No.CH-03-L-0073, make Mercedes, owned by the petitioner, was refused to be released, on superdari

Notice of motion was issued and pursuant thereto, reply has been filed.

Learned counsel for the petitioner submits that ownership of the petitioner is not in dispute. Since the petitioner is registered owner of the

vehicle in question, he was very much entitled for release thereof on superdari, during the course of trial. He further submits that no confiscation proceedings were either initiated by the prosecuting agency nor any such order has been passed by the learned Court. Placing reliance on the following judgments, learned counsel for the petitioner prays for setting aside the impugned order, by allowing the present petition.

1. ***Kala Ram Vs. State of Punjab, 2012 (4) Law Herald 3267 (Pb & Hry High Court).***
2. ***Mohan Singh Vs. State of Punjab, 2001 (2) RCR (Crl.) 664 (Pb & Hry High Court).***
3. ***Karamjit Singh @ Machanda Vs. State of Punjab, 1996 (1) Crimes 52 (Pb & Hry High Court).***
4. ***Iqbal Singh Vs. State of Punjab, 2013 (2) RCR (Crl.) 612 (Pb & Hry High Court).***
5. ***Jagdish Chander Sharma Vs. S.K. Srivastava, Intelligence Officer, Directorate of Revenue Intelligence, New Delhi, 2005 (3) RCR (Crl.) 198 (Delhi High Court).***
6. ***Sadiq Mohammad Vs. State of Punjab, 1998 (4) RCR (Crl.) 599 (Pb & Hry High Court).***
7. ***Hari Singh Vs. State of Haryana, 1987 (1) PLR 413 (Pb & Hry High Court).***
8. ***Pardeep Kumar Vs. State of Punjab, 2014 (7) RCR (Crl.) 2374 (Pb & Hry High Court).***
9. ***Angrej Singh Vs. State of Rajasthan, 1992 (3) CCR 2575 (Rajasthan High Court).***

Per contra, learned counsel for the State, while placing reliance on a Division Bench judgment of this Court in **Tarsem Singh Vs. State of Punjab, 2005 (4) RCR (Crl.) 300**, submits that until and unless an appropriate order is passed by the learned trial Court in the confiscation proceedings, petitioner is not entitled for release of the vehicle in question, on superdari. Referring to the observations made by Division Bench in para 11 of the judgment, learned counsel for the State would contend that she would have no objection in case the learned trial Court is directed to pass appropriate order on the issue of confiscation first, before release of the vehicle in question in favour of the petitioner, on superdari. She prays for dismissal of the present petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that until and unless the learned Court of competent jurisdiction passes an order in confiscation proceedings, in view of the provisions contained in Sections 60, 61, 62 & 63 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act' for short), petitioner has not been found entitled for the release of the vehicle in question in his favour, on superdari. It is so said because learned counsel for the petitioner could not refer to any such contrary judgment or provisions of law which may establish such an entitlement of the petitioner and rightly so, it being a matter of record.

However, it is equally true that confiscation proceedings, at the hands of the prosecution, have to be initiated at the earliest possible time, so as to ensure that an appropriate order, regarding confiscation of the vehicle in

question, is passed by the learned Court of competent jurisdiction, to avoid irreparable loss to the seized property. It goes without saying that the seized property, as is the car owned by the petitioner in the present case, will keep on decaying with the passage of time and the delay would serve no purpose. To avoid such an unwarranted situation, it is the bounden duty of the prosecuting agency as well as the learned trial Court, to initiate the confiscation proceedings and take the same to its logical end without any delay, so that the right of the true owner of seized property or registered owner of any vehicle as in the present case, for releasing the seized property in question, on superdari, is not kept in abeyance for unreasonably long period.

The abovesaid view taken by this Court is also supported by the Division Bench judgment of this Court in Tarsem Singh's case (supra). The relevant observations made by the Division Bench in paras 10, 11 and 15 to 17, which can be gainfully followed in the present case, are as under: -

“ A combined reading of both these section brings into focus the desire of the Legislature not to confine its drive to curb the spreading of Narcotic Drugs and Psychotropic Substances to take actions against carriers but to strike at the big fish involved in spreading and sustaining the malady by taking actions against persons providing facilities for transportation and stocking of contraband substances as also confiscating such transport and facilities involved in smuggling of the same.

Even in the present case, the manner in which the notice under Section 63 of the Act had been issued to the owner only after the decision of the trial shows a complete lack of

appreciation of the purport of object sought to be achieved by the Legislature by enacting Sections 60, 61 and 62 of the Act. Section 63 of the Act makes it abundantly clear that decision regarding confiscation had got to be taken during the trial and not after it and the right of the State to confiscate the conveyance and articles or thing seized under this Act is irrespective of the result of the trial. In this view of the matter, one fails to see why Courts of law, as in the present case delay the issuance of notice under Section 63 of the Act until after the trial which only facilitates the owner to get away with the property without his liability being adjudicated as is the position in the present case. In our opinion, the mandate of the Legislature can clearly be discerned from the words "during the trial", which would oblige the Courts to decide the plea which is to be taken by the owner for avoiding confiscation at the earliest preferably before releasing the vehicle or property on superdari.

Before parting with this judgment, we deem it appropriate to point out that from the record it has come to our notice that tractor-trolley in question, which was being used for transporting the poppy husk was released on superdari to Arshinderpal Singh on 17.4.1995. This order would obviously had been passed while exercising the powers under Sections 451 and 452 of the Code of Criminal Procedure, reads as under :-

"Report of the SHO perused. The vehicle in question is ordered to be released on superdari to the applicant on his furnishing superdaginama in the sum of Rs. 2,00,000/- with one surety in the like amount, undertaking not to sell it or to change its structure and to produce the same in the Court on every date of hearing."

We are surprised that the same has been passed by the Sub-Divisional Judicial Magistrate, who would have no jurisdiction to dispose of such an application in view of Section 63 of the Act, which makes it clear that irrespective of the decision of the trial, any article or thing seized under this Act, which are used in the commission of offence have got to be confiscated and the Special Judge is obliged to start separate proceedings in relation to confiscation after expiry of one month, if no one comes forth to claim the property. In view of the provision of Section 63 of the Act, the provisions of Code of Criminal Procedure as contained in Sections 451 and 452 will stand modified to the extent indicated in the aforementioned section and any claimant to the property will be obliged to satisfy the Court in terms of the exceptions carved out in Sections 60, 61 and 62 of the Act before he is returned the custody of the vehicle taken into custody when it was being used for transporting a narcotic substance. In the present case as already pointed out by us, the proceedings under Section 63 of the Act were not initiated until the disposal of the trial, which is not warranted by law. The proceedings for

confiscation have got to be completed during the pendency of the trial and are in no way connected therewith as delay therein would only lessen the value of the property so confiscated and thereby cause loss to the State or the owner.

In these circumstances, we are of the considered view that the trial Court should recall the order giving superdari of the tractor-trolley to Arshinder Pal Singh and take a decision within two months regarding confiscation of the same in accordance with law.

A copy of this order be sent to all the Special Judges exercising jurisdiction under the Narcotic Drugs and Psychotropic Substances Act, 1985 in the States of Punjab, Haryana and Union Territory, Chandigarh for information and necessary compliance.”

It seems that the abovesaid Division Bench judgment of this Court has escaped the notice of the learned trial Court.

So far as the judgments relied upon by learned counsel for the petitioner are concerned, there is no dispute about the law laid down. However, on close perusal of the cited judgments, none of them has been found of any help to the petitioner, being distinguishable on facts. Further, in none of the Single Bench judgments, as relied upon by learned counsel for the petitioner, abovesaid Division Bench judgment of this Court in Tarsem Singh's case (*supra*) has either been referred or dealt with.

Further, it is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any

codified or judgemade law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundra Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533.**

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, present petition is disposed of with a direction to the prosecuting agency to move an appropriate application before the learned trial Court at an early date, and in any case within a period of three weeks from today, for initiation of the confiscation proceedings, in view of the provisions contained in Sections 60, 61, 62 & 63 of NDPS Act.

Needful having been done by the prosecution, the learned trial Court shall also make an endeavour to decide the confiscation proceedings at an early date and in any case within a period of three months so that the right of the petitioner to get the car in question, released in his favour, on superdari, gets crystallized without any further loss of time. Thereafter, the learned trial Court shall consider the right of petitioner for releasing his car, on superdari, by passing a fresh order, in accordance with law, but without any delay.

Resultantly, with the abovesaid observations made and directions issued, present petition stands disposed of.

[RAMESHWAR SINGH MALIK]
JUDGE

28.07.2015
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