

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-4009-2016

Date of decision: November 28, 2016.

Anis @ Anees

... **Petitioner**

v.

State of Haryana

... **Respondent**

CORAM: **HON'BLE MR. JUSTICE A.B. CHAUDHARI**

Present: Shri P.K. Ganga, Advocate for the petitioner.

Shri Arjun Singh Yadav, Assistant Advocate General, Haryana.

A.B. Chaudhari, J. (Oral):

FACTS:

The truck, bearing registration No.UP-78-CN-0474, belonging to the petitioner was seized by the police officials in FIR No.74 dated 27.6.2016 under Section 5 of the Haryana Gauvansh Sanrakshan and Gausamvardhan Act, 2015 (in short the Act), Police Station Odhan, District Sirsa. The truck was stopped on an information received by the police in which about 15 oxen were found. Thereafter, the necessary action was taken. It is the case of the petitioner that he is the owner of the truck and though the truck was not used for any purpose as stated by the police department, the truck was for no reasons seized by the police and is lying in the police station. The petitioner therefore applied for release of the truck on spurdari and the trial court made an order rejecting the application for release of the truck on spurdari.

Learned Counsel for the petitioner vehemently argued that the trial court has not given any reasons on merits for rejecting the application for release of the truck on supurdari but has merely quoted the bar provided by sub-section (3) of Section 17 of the Act. According to him, reliance placed by the trial court is wrong as the petitioner cannot be left without any remedy. Even otherwise, he submitted that this Court has power under Section 482 Cr.P.C. to order release of the truck in exercise of inherent powers or in the present revision petition and the bar would not come in the way of this Court for release of the truck in favour of the petitioner.

Per contra, Learned Counsel for the State opposed the petition and submitted that there is a clear cut bar for the courts or Tribunals from releasing the truck on spurdari and the power is only with the competent authority. Learned Counsel for the State relies on sub-section (3) of Section 17 of the aforesaid Act. He therefore prayed for dismissal of this petition.

CONSIDERATION:

I have heard learned counsel for the rival parties. I have perused the record. Section 17 of the Act reads thus:-

“Confiscation of vehicles:

(1) Whenever an offence punishable under this Act has been committed, any vehicle used in the commission of such offence shall be liable to be confiscated by a police officer not below the rank of Sub-Inspector or any person authorized in this behalf by the Government.

(2) Where any vehicle referred to in sub-section (1) is confiscated in connection with the commission of any offence punishable under this Act, a report about the same, without unreasonable delay, by made by the person seizing it to the competent authority and whether

or not a prosecution is instituted for commission of such offence, the competent authority, having jurisdiction over the area where the said vehicle was confiscated, may, if satisfied that the said vehicle was used for commission of offence under this Act, order confiscated of the said vehicle;

Provided that before ordering confiscation of the said vehicle, a reasonable opportunity of being heard shall be afforded to the owner of the said vehicle.

(3) Whenever any vehicle as referred to in sub-section (1) is confiscated in connection with commission of an offence under this Act nor withstanding anything contained in any other law for the time being in force, no court, Tribunal or other authority, except the competent authority shall have jurisdiction to make order with regard to the possession, delivery, disposal, release of such vehicle.

(4) Where the competent authority is of the opinion that it is expedient in public interest that the vehicle, as referred to in sub-section (1), confiscated for commission of offence under this act be sold by public auction, he may at any time direct is to be sold;

Provided that before giving such directions for sale of confiscated vehicle, a reasonable opportunity of being heard shall be afforded to the owner of the said vehicle.

(5) Any person aggrieved by an order made by the competent authority under sub-section (2) or sub-section (4) may, within a period of thirty days from the date of such order prefer an appeal to the Deputy Commissioner for the district concerned.”

The trial court found that Section 17(3) of the Act clearly provides for the bar of jurisdiction for any court or Tribunal except the competent authority to make any order with regard to the possession, delivery, disposal, release of such vehicle and thus dismissed the application.

A careful perusal of Section 17(3) of the Act shows that it

sub-section 3 shall operate notwithstanding anything contained in other any other law for the time being in force. This is thus a special provision under the said Act providing for the bar as aforesaid. To put in other words, the provisions of Section 451, 452, 457 contained in Cr.P.C. providing for delivery or disposal of the property either by way of an interim measure or finally empowering the court to release/deliver the property cannot be resorted to by the court for making any order therefor in view of the non-obstante clause. The bar will also apply to High Court for exercising inherent power under Section 482 Cr.P.C. as well. I am, therefore, in full agreement with the view taken by the learned trial Judge to this effect.

Learned Counsel for the petitioner has relied on the Division Bench judgment dated 19.09.2016 of this Court in the case of Gurbinder Singh @ Shinder v/s State of Punjab (CRR No.1765 of 2015), and submitted that the provision of Section 17(3) in relation to disposal of the property seized under the NDPS Act may also be interpreted on the same lines. I am unable to agree with the submission because there is no such bar created under the NDPS Act alike the one under Section 17(3) of the Act debarring the Court, Tribunal or authority to make an order of disposal/delivery/release of the property. The said judgment is therefore clearly not applicable.

The next question is, can a citizen be left without any remedy when his valuable property has been seized. In the light of the principle of *ubi jus ibi remedium*, I think the petitioner cannot be left without any remedy. The petitioner has available an extraordinary remedy under Articles

226/227 of the Constitution of India for claiming the relief. It is well settled legal position that the provisions like the one under Section 17(3) of the Act providing for a bar for the courts cannot and do not bar the extraordinary jurisdiction of the High Court under Articles 226/227 of the Constitution of India. To sum up, the petitioner does not have ordinary remedy of claiming the relief from the court constituted under the Cr.P.C. However, the petitioner has a remedy to approach the High Court in its extraordinary writ jurisdiction.

As a sequel, I hold that the present revision petition will have to be dismissed as not maintainable in view of the bar contained in Section 17 (3) of the Act, leaving the petitioner to take up the remedy under Articles 226/227 of the Constitution of India.

With the above observations, the petition is disposed of.

[**A.B. Chaudhari**]
Judge

November 28, 2016.
kadyan

Whether speaking/reasoned
Whether reportable

Yes
Yes