

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-10314-2016

Date of Decision: 21.11.2018

Darshan Singh

...Petitioner

vs.

State of Haryana and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Pardeep Sehrawat, Advocate for
Mr. Vivek Goyal, Advocate, for the petitioner.

Mr. Himmat Singh, DAG, Haryana.

ARVIND SINGH SANGWAN,J

Prayer in this petition is for quashing of order dated 01.01.2015 in case No. 302/11 dated 17.11.2011, whereby the trial Court had issued warrants of attachment of the property of the petitioner, for effecting recovery of Rs.7 lacs, on the basis of surety bonds furnished by the petitioner before the trial Court, while the tractor-trolley was released by the Special Environment Court, Kurukshetra, vide order dated 02.05.2011 (Annexure P3), on an application filed by the petitioner.

Brief facts of the case are that Range Forest Officer, Forest Range, Kalesar, filed a complaint before the Presiding Officer, Special Environment Court, Kurukshetra, regarding illegal loading of stones in tractor trolley bearing engine No. 39.1347/SMA00045 and Chassis No. QUTA30705079051, colour white/blue. It was further stated in the complaint that when the field staff tried to stop the offenders, they tried to manhandle the forest officer and one person was caught and the complaint was filed against four persons, namely, Sukhbir, Nitu, Rohit and Deepak under Sections 27/29/35/37 and 39 of the Wild Life Protection Act, 1972 and Sections 20, 26 (g) and 26 (h) of the Indian Forest Act, 1927.

Petitioner-Darshan Singh was the registered owner of the tractor trolley and was not arrayed as an accused in the aforesaid complaint, filed an application dated 07.01.2011 (Annexure P2) for release of tractor trolley on superdari. The Presiding Officer, Special Environment Court, vide order dated 02.05.2011 (Annexure P3) released the tractor trolley in favour of the petitioner on furnishing requisite bonds. Thereafter, the petitioner received a letter dated 20.11.2012 from the office of the Deputy Range Officer, Forest Range, Kalaser, to produce the tractor trolley. The petitioner submitted a reply dated 02.01.2013 (Annexure P4) to the aforesaid letter that the tractor, which was financed by L&T Finance Ltd., was taken over by the said finance company as the petitioner could not pay the balance loan amount. The petitioner has also moved an application before the Presiding Officer, Environmental Court, Kurukshetra, for summoning the Manager of L&T Finance Ltd. (of the concerned Branch, from where the petitioner had taken the loan), as a witness as the tractor was re-possessed on account of non-payment of installments.

The trial Court, thereafter, recorded the statement of Sanjeev Kumar, Assistant Manager of L&T Finance Ltd., who disclosed that the tractor in question has already been sold to a third person, namely, Mahi Pal Singh. The trial Court also recorded the statement of Mahi Pal Singh, who stated that he had further sold the tractor to one Jagdish Singh. Thereafter, trial Court, vide order dated 02.04.2014 (Annexure P6), directed the petitioner to produce the case property i.e. tractor trolley. Thereafter, trial Court, vide order dated 29.10.2014 (Annexure P7), forfeited the surety bonds of the petitioner/Superdar and directed the concerned Collector to recover the amount of surety i.e. Rs.7 lacs as arrears of land revenue.

In pursuance of the said order, warrants of attachment of property of the petitioner were issued by the trial Court on 01.01.2015 and, thereafter, a proclamation of sale was also issued by the Collector, Yamuna Nagar, in exercise of power under Sections 79 of the Punjab Land Revenue Act, 1887 read with Para 33 of Standing Order No. 29, for the sale of property of the petitioner.

Learned counsel for the petitioner has submitted that the petitioner is not an accused in the main case where, four other accused persons who were apprehended, are facing the trial.

Counsel has relied upon the judgment titled as Anand Vs. N.C.T. of Delhi, 2004 (3) CCR, 474, wherein it is held by Delhi High Court that for releasing the vehicle on superdari, the object is to ensure its production and not to extract value thereof, from the owner in case he fails to produce the same. In the said case, the owner of the vehicle, while furnishing the surety bonds, for taking the vehicle on superdari, had given bonds of Rs.1,70,000/- and having failed to produce the vehicle in Court, the Court reduced the amount from Rs.1,70, 000/- to Rs.20,000/-.

Counsel further submits that in the instant case, the petitioner is a poor farmer and he has taken the tractor by taking loan from L&T Finance Ltd. and since the financier has taken the possession of the tractor on account of default in paying the installments and has further sold it to third person, as it is clear from statement of Sanjeev Kumar, Assistant Manager of L&T Finance Ltd. and statement of one Mahi Pal Singh, who has purchased the tractor from Finance Company. Therefore, it was beyond the control of the petitioner to produce the tractor before the trial Court.

It is further submitted that imposition of penalty of Rs. 7 lacs

on account of non-production of the tractor and for violating the terms and conditions of the superdari is on higher side and the petitioner is not in a position to pay the amount even if the immovable property of the petitioner is put to an auction to recover the same. Counsel further submits that the petitioner is ready to deposit the amount of Rs.25,000/- before the trial Court/successor Court within a period of 03 months.

Learned State counsel, on the basis of affidavit of Range Forest Officer, Kalesar, has submitted that the tractor trolley of the petitioner was seized at the spot and since the petitioner has got the same released on superdari from the Court on furnishing surety bonds of Rs.7 lacs, the petitioner is bound to pay the aforesaid amount and the trial Court has rightly directed the Collector to recover the said amount.

After hearing learned counsel for the parties, I find merit in the present petition.

Though, the petitioner has submitted surety bonds to the tune of Rs.7 lacs while getting the tractor trolley released in his favour on superdari, however, he has explained the hardship and the facts which are beyond his control as the tractor in question was re-possessioned by the Financier i.e. L&T Finance Ltd. and was subsequently sold to another person, who has further sold the same to a third person. Therefore, I feel inclined to reduce the penalty imposed by the trial Court from Rs. 7 lacs to Rs. 25,000/-. The petitioner is granted three months' time to deposit the said amount from the date of receiving of this order failing which, the petition shall be deemed to have been dismissed.

21.11.2018
smriti

(**ARVIND SINGH SANGWAN**)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No