

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M No. 5686 of 2017 (O&M)

Date of decision : 9.5.2018

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Sahabuddin

.....Petitioner

vs.

State of Haryana

.....Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. R.S. Sihota, Senior Advocate with
Mr. B.R. Rana, Advocate
for the petitioner

Mr. Gaurav Bansal, Assistant Advocate General,
Haryana

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H. S. Madaan, J.

This is a petition under Section 482 Cr.P.C. for quashing the order dated 10.1.2017 passed by the Additional Sessions Judge and the order dated 25.10.2016 passed by the SDJM, Sohna, being illegal and against the law, with a further prayer that the respondents be directed to release the vehicle No. HR-74A-6975 (TATA 407) on superdari to the petitioner.

Briefly stated, facts of the case are that the vehicle make

TATA 407 bearing registration No. HR-74A-6975 was apprehended by the police while transporting cows and calves. The culprits were apprehended. The vehicle in question was confiscated. The accused were sent up to face trial, during the course of which Sahabuddin the registered owner of the vehicle in question had moved an application for release of the vehicle to him on Superdari.

Learned Sub Divisional Judicial Magistrate, Sohna, dismissed the application by making reference to Section 17 of the Haryana Gauvansh Sanrakshan and Gausamvardhan Act, 2015 (hereinafter to be referred to as 'the Act'). For ready reference that provision is reproduced as under :-

"17. 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, be 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 confiscation 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 notwithstanding 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 it 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 of the district concerned.

(6) Any order of confiscation made by the competent authority shall not prevent the infliction of any punishment to which the person affected thereby is liable under this Act."

Learned trial Magistrate had considered the police report to the effect that as per registration certificate Sahabuddin is the registered owner of the vehicle in question, who had stated before the police that he had already sold the vehicle to Ishub and Ishub was owner of the said vehicle.

The petitioner felt aggrieved by that order and had filed a revision petition before the Court of Sessions, which was disposed of by the Additional Sessions Judge, Gurgaon, vide order dated 10.1.2017, affirming the order passed by the Court below and dismissing the revision petition. As such the petitioner has approached this Court by way of filing a petition under Section 482 Cr.P.C., notice of which was given to the State.

I have heard, learned counsel for the petitioner, learned

State counsel, besides going through the record and I find that there is no merit in the petition.

Section 17 of the Act deals with confiscation of vehicles used in commission of offence punishable under the Act. A full fledged procedure is provided directing that before ordering confiscation of that vehicle, a reasonable opportunity of being heard shall be afforded to the owner of the said vehicle. It also provides that before ordering sale of the confiscated vehicle, a reasonable opportunity of being heard shall be afforded to the owner of the said vehicle. As per sub-section (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 of the district concerned. In that way Section 17(3) of the Act provides a bar for any Court or Tribunal to pass any order with regard to possession, delivery, disposal, release of such vehicle. The petitioner is not shown to have approached the competent authority under Section 17 of the Act, which he should have and rather approached the trial Court and when was un-successful there, Court of Sessions and thereafter this Court. With equal efficacious remedy being available, the petitioner should approach the competent authority asking for release of the vehicle registered in his name on superdari and if un-succesful there, avail of remedy of appeal provided under Section 17 (5) of the Act, rather than by passing the authorities under the Act and approaching the Courts.

I do not see any reason to upset the order passed by the Courts below by exercising the jurisdiction under Section 482 Cr.P.C.. the petition being without any merit, stands dismissed.

9.5.2018
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(H.S. Madaan)
Judge

Whether speaking / reasoned	Yes / No
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Whether reportable	Yes / No
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