

CWP No.3806 of 2018

[1]

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

CWP No.3806 of 2018
Date of decision: April 06, 2018

Sahabuddin ...Petitioner

Versus

State of Haryana and another ...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Saleem Ahmed, Advocate,
for the petitioner.

Rakesh Kumar Jain, J. (Oral)

This petition is directed against the order of the Sub Divisional Magistrate, Ferozepur Jhirka dated 20.12.2016, by which Truck Container of the petitioner bearing Registration No.HR74-A-1665 has been ordered to be seized in terms of Section 17(2) of the Haryana Gauvansh Sanrakshan and Gausamvardhan Act, 2015 (hereinafter referred to as the "Act"), and the order dated 21.11.2017 of the Deputy Commissioner, Nuh, by which appeal filed by the petitioner against the order dated 20.12.2016 has been dismissed. The petitioner has also prayed for the issuance of a writ in the nature of *mandamus* seeking a direction to the respondents to release his vehicle on superdari.

In brief, the Station House Officer, Ferozepur Jhirka, vide his application dated 18.10.2015 had reported to the Sub Divisional Magistrate, Ferozepur Jhirka that a Truck Container bearing Registration No.HR74-A-1665, has been taken in custody by the police, in which 5 cows and 10 calves were found loaded, being taken away, for the purpose of

slaughtering and an FIR No.238 dated 08.10.2016, under Sections 5/13(2) 17 of the Act has been registered at Police Station Ferozepur Jhirka. The Station House Officer concerned made a request to the Sub Divisional Magistrate for confiscation/seizure of the said vehicle in terms of Section 17(2) of the Act.

After the application was received, a show cause notice was given to the petitioner, who appeared before the Sub Divisional Magistrate and filed his reply. After taking into consideration the allegations levelled against the petitioner and his reply thereto, coupled with the contents of the application made by the Station House Officer and the contents of the FIR, much-less the fact that the cows and the calves were found loaded in his vehicle, with their legs and mouth tied, the Sub Divisional Magistrate passed the order of seizure of the offending vehicle in terms of Section 17(2) of the Act.

Aggrieved against the order dated 20.12.2016, passed by the Sub Divisional Magistrate, the petitioner preferred a revision petition before the Court of Additional Sessions Judge, Mewat, which was dismissed on 17.07.2017 on the ground that the petitioner has a remedy of appeal in terms of Section 17(5) of the Act before the Deputy Commissioner. Accordingly, the petitioner filed the appeal before the Deputy Commissioner, Nuh, which was also dismissed vide his order dated 21.11.2017.

Thus, the petitioner has made two prayers in this petition; firstly for quashing the impugned orders and secondly for seeking a direction to the respondents to release his vehicle on superdari.

In respect of the issue regarding release of the vehicle on superdari, the petitioner has submitted that the application made by him in this regard has become infructuous.

I have heard learned counsel for the petitioner and examined the available record with his able assistance.

Since the order has been passed by the Competent Authority in terms of Section 17(2) of the Act and the petitioner has also prayed for the issuance of a writ in the nature of *mandamus* for seeking the release of his vehicle, therefore, it would be relevant to refer to Section 17 of the Act, which reads 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.”

After going through the aforesaid provisions, it is evident that as per Section 17(1) of the Act, if it is found that any vehicle has been used for commission of an offence under the Act, then it would be liable to be confiscated by the police officer. It is nowhere provided that the order of confiscation could be passed only after termination of the proceedings initiated in terms of registration of the FIR. Section 17(2) of the Act further provides that a report in regard to the commission of offence and for confiscation of the vehicle used in the commission of offence has to be made by the person seizing the vehicle 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 the Act can order for confiscation of the said vehicle. The “competent authority” is also defined in Section 2(d) of the Act to mean the concerned Sub Divisional Magistrate and includes any other officer appointed by the Government for exercising the powers under the Act. Section 17(2) further provides that before the order of confiscation is passed, a reasonable opportunity shall have to be afforded to the owner of the said vehicle.

In the present case, the commission of offence has been found when the police came across the offending vehicle, in which 5 cows and 10 calves were loaded with their legs and mouth tied and were being taken away by the petitioner for the purpose of slaughtering. Immediately thereafter, the Police Officer made a report to the competent authority intimating the commission of offence and for confiscation of the offending vehicle. The competent authority, while referring to the application, has rightly applied the provisions of Section 17(2) of the Act for taking action against the petitioner after giving him show cause notice and after taking his reply and on being satisfied that the petitioner has been taking away the cows and the calves in his vehicle for the purpose of slaughtering and passed the order of confiscation of the vehicle on the ground that the offence has been committed.

Section 17(5) of the Act further provides that any person aggrieved by an order made by the competent authority under Section 17(2) or 17(4) of the Act may, within a period of thirty days from the date of such order, prefer an appeal to the Deputy Commissioner of the district concerned.

The petitioner has though filed the revision petition before the Additional Sessions Judge, Mewat but it was dismissed only on the ground of jurisdiction and the petitioner was relegated to the remedy of appeal in terms of Section 17(5) of the Act. The petitioner, thereafter, availed the remedy of appeal by filing the same before the Deputy Commissioner, Nuh but his appeal was dismissed on 21.11.2017 on the basis of a finding of fact recorded therein.

Insofar as the impugned orders are concerned, there is no inherent defect much-less illegality for the purpose of interference by this Court and hence, both the impugned orders are hereby upheld but insofar as the prayer of

the petitioner for seeking a *mandamus* to direct the respondents to release his vehicle on superdari is concerned, Section 17(3) of the Act provides that whenever any vehicle, as referred to in sub-section (1), is confiscated in connection with commission of an offence under the 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.

Therefore, in view of the availability of the aforesaid statutory provision, the petitioner cannot ask for release of his vehicle by filing the present petition because he has the statutory remedy to approach the competent authority by way of filing an application under Section 17(3) of the Act for seeking release of his vehicle.

Thus, the second prayer made by the petitioner is hereby declined on the ground of availability of statutory remedy to him under Section 17(3) of the Act, for which he need not to invoke extraordinary writ jurisdiction of this Court under Articles 226/227 of the Constitution of India.

With these observations, the present petition is hereby dismissed.

March 06, 2018
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(Rakesh Kumar Jain)
Judge

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