

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

Criminal Appeal No.2096-SB of 2005 (O&M)

Date of Decision: 29.08.2019

Narender Kumar

..... Appellant

Versus

State of Haryana and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. Amit, Advocate for
Mr. Bhupinder Singh Walia, Advocate for the appellant.

Mr. Pawan Garg, Assistant Advocate General, Haryana
for respondent No.1/State.

None for respondent No.2.

MAHABIR SINGH SINDHU, J.

Present appeal has been preferred against the impugned order dated 17.09.2005, passed by learned Additional Sessions Judge, Fatehabad (*for short 'trial Court'*), whereby the Canter (TATA 407) bearing registration No.HR-39-9525 (*for short 'vehicle in question'*) has been ordered to be confiscated to the State and directed to dispose off the same as per rules.

Brief facts of the case are that an FIR No.215 dated 11.11.2000, under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (*for short 'the Act'*) was registered at Police Station Sadar Tohana against one Uggarsain for illegal possession of 20 bags of *Poppy Husk* in the vehicle in question. Learned trial Court, in its judgment dated 14.01.2003, came to the conclusion that driver of the vehicle in question has not been identified, therefore, above said Uggarsain was acquitted of the charges while giving him the benefit of doubt, but in the concluding

paragraph, it was directed that separate proceedings be initiated under Section 60 of Act for confiscation of the vehicle in question against its registered owner, namely, Ram Niwas.

Consequently, the process for confiscation of the vehicle in question was initiated and a notice in this regard was sent to Ram Niwas, but in response thereto, he denied the ownership of the vehicle in question while submitting that he has already sold the same to the present appellant. Thereafter, a notice was sent to the appellant, but he also denied the ownership of the vehicle in question by way of his written reply dated 15.06.2005 and submitted that he has further sold it to one Rohtash and relevant paragraph of the reply reads as under:-

“ That respondent Narender due to his weak financial position could not manage to keep TATA 407 HR39/9525 and so he further sold his vehicle to Rohtas s/o Het Ram, resident of Motsara in January, 1999 orally and handed over the above said vehicle to Rohtash and after that respondent Narender had no connection whatsoever with the above said vehicle and respondent Narender neither moved an application for superdari of the above said vehicle in the Court of S.D.J.M., Tohana nor submitted Superdarinama in the Court of S.D.J.M., Tohana.”

Learned trial Court, after taking into consideration the material available on record and hearing both sides, confiscated the vehicle in question in favour of the State while passing the impugned order. Hence, the present appeal.

It is argued by learned Counsel for the appellant that:-

- (i) since there was no proper notice as provided under Section 63 of the Act, therefore, the impugned order is not legally sustainable;*

(ii) although in reply dated 15.06.2005, it was submitted that vehicle in question had been sold to one Rohtash orally, but that cannot be termed as a valid transfer and as such, the appellant continues to be owner of the same.

On the other hand, learned State Counsel has opposed the submissions made on behalf of the appellant while submitting that any vehicle, which was used for carrying the contraband, is liable for confiscation under Section 60 of the Act and that has rightly been ordered in this case. Further submitted that vehicle in question has already been sold way-back on 20.08.2009 in the auction proceedings for a total sale consideration of ₹ 67,000/- and the appellant has no concern with the same, therefore, prayed for dismissal of the present appeal.

Copy of aforesaid order dated 20.08.2009 is taken on record and marked as 'X'.

Before proceeding further, it is necessary to reproduce Section 60 of the Act, which reads as under:-

“ Liability of illicit drugs, substances, plants, articles and conveyances to confiscation.-

(1) Whenever any offence punishable under this Act has been committed, the narcotic drug, psychotropic substance, controlled substance, opium poppy, coca plant, cannabis plant, materials, apparatus and utensils in respect of which or by means of which such offence has been committed, shall be liable to confiscation.

(2) Any narcotic drug or psychotropic substance or controlled substances lawfully produced, imported inter-State, exported inter-State, imported into India, transported, manufactured, possessed, used, purchased or sold along with, or in addition to, any narcotic drug or psychotropic substance or controlled substances which is liable to confiscation under sub-section (1) and there receptacles, packages and coverings in which any narcotic drug or psychotropic

substance or controlled substances, materials, apparatus or utensils liable to confiscation under sub-section (1) is found, and the other contents, if any, of such receptacles or packages shall likewise be liable to confiscation.

(3) Any animal or conveyance used in carrying any narcotic drug or psychotropic substance or controlled substance, or any article liable to confiscation under sub-section (1) or sub-section (2) shall be liable to confiscation, unless the owner of the animal or conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person-in-charge of the animal or conveyance and that each of them had taken all reasonable precautions against such use.”

Perusal of sub-section 3 of Section 60 of the Act clearly reveals that a conveyance used while carrying any contraband is liable for confiscation unless the owner thereof proves that it was so used without his knowledge or connivance or that he had taken all reasonable precautions against such use.

Learned trial Court, while acquitting the accused Uggarsain vide its judgment dated 14.01.2003, came to the conclusion that 20 bags of *Poppy Husk* containing 15 Kgs. in each of the bag were being transported in the vehicle in question, but identity of the driver could not be established, therefore, he was acquitted while giving the benefit of doubt. Neither the registered owner-Ram Niwas; nor appellant have proved that vehicle in question was being used without their knowledge or connivance or that they have taken reasonable precautions when it was intercepted along with the contraband i.e. 20 bags of *Poppy Husk* on 11.11.2000. Therefore, there are legal sanctions that in such a scenario, the vehicle can be confiscated in favour of the State.

The argument, raised on behalf of the appellant, that there is no

proper notice as provided under Section 63 of the Act is fallacious.

This Court has perused the record of learned trial Court and found that present appellant was having due notice before passing the impugned order as is clear from the various zimni orders and order dated 01.08.2005, being relevant, reads as under:-

“ Misc. Criminal Proceedings received by transfer. It be checked and registered. This is a petition for confiscation of a vehicle involved in the commission of offence under Section 15 ND&PS Act. Notice of the same was given to the registered owner Ram Niwas who stated that prior to this case he has sold the vehicle to Narender and never took on superdari and fraud has been committed by Narender by proceeding some imposter in the court and the vehicle has taken on superdari by him. Accordingly on notice respondent Narender Kumar appeared and in his reply admitted that he has purchased the vehicle in question from Ram Niwas in the year 1998. In these circumstances before consideration the question confiscation of the vehicle the said Narender is directed to produce the vehicle in the court on 16.8.2005 as he has already stated that he has never taken the vehicle on superdari. ”

Perusal of aforesaid order dated 01.08.2005 clearly reveals that appellant was not only having the proper notice, rather he committed a fraud while producing some imposter and taking the vehicle in question on *superdari* before learned trial Court, thus, contention on first point is liable to be rejected.

Despite repeated queries, learned Counsel for the appellant is not able to show any material to indicate that vehicle in question is owned by the appellant.

As per the provisions of Section 60 of the Act, where a vehicle is

found involved in carrying the contraband and ownership of the same is established, even then, the only escape route available for the owner is to prove that it was used without his knowledge or connivance or he has taken due precautions, but in the present case, no such plea has been raised by the appellant. Therefore, this Court does not find any merit with the arguments raised on behalf of the appellant that he continues to be owner of the vehicle in question and there was no valid transfer in favour of Rohtash at his instance.

It is relevant to mention here that vide order dated 19.03.2007, the auction of the vehicle in question was stayed, but despite that, the same had taken place on 20.08.2009 for an amount of ₹ 67,000/-, therefore, this Court was inclined to initiate the contempt proceedings against the erring officials/officers, but since this Court does not find any substance in the present appeal itself, therefore, thought it appropriate not to proceed further on that count.

No other point has been argued by either of the parties.

Keeping in view the facts and circumstances, discussed hereinabove, this Court is left with no option except to dismiss the present appeal being without any merits.

Ordered accordingly.

August 29, 2019

Gagan

**(MAHABIR SINGH SINDHU)
JUDGE**

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>