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

**CRM-M-1958-2020
Date of Decision: 05.02.2020**

Sunil Kumar

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. S.K. Bishnoi, Advocate,
for the petitioner.

Mr. Navdeep Singh, AAG, Haryana.

SUDIP AHLUWALIA, J. (ORAL)

1. The matter is taken up for hearing.
2. This petition has been preferred against the impugned order dated 03.01.2020, passed by the Ld. Additional Sessions Judge, Fatehabad in IA-1/31.12.2019 (Annexure P-5).
3. The petitioner's original application for return of the seized vehicle was rejected by the Ld. Judicial Magistrate 1st Class, Tohana on 15.10.2019 (Annexure P-2), after observing that he had already committed the case record to the Ld. Sessions Court, Fatehabad, on account of which, the application no longer is maintainable before him.
4. The petitioner, thereafter, approached Ld. Superior Court of the Additional Sessions Judge, Fatehabad with the similar prayer as the case record had already been committed to the said Court. The prayer was, however, rejected by the Ld. Additional Sessions Judge, who observed that the original order of the Ld. Magistrate, ought to have been challenged in

revision and the same relief could not have been prayed for in the Superior Court.

5. In the opinion of this Court, this view of the Ld. Additional Sessions Judge is not well-founded. After having committed the case record to the Superior Court, the Ld. Magistrate had undoubtedly become *functus officio*, and therefore, could not have passed an order on merits on the application filed before him, which in essence was also observed by him in his order dated 15.10.2019. Therefore, it was incumbent upon the Ld. Additional Sessions Judge, Fatehabad to pass an appropriate order on merits on the petitioner's application for return of his seized vehicle, and such prayer could not have been dismissed outright on the premise that it was not maintainable since the Ld. Magistrate's order had not been challenged in the revision.

6. The impugned order is, therefore, set aside and the Ld. Additional Sessions Judge, Fatehabad is directed to pass a reasoned order on the petitioner's application for release of seized vehicle within a month from the date of communication of this order.

05.02.2020*Bhumika***(SUDIP AHLUWALIA)
JUDGE**

1. Whether speaking/reasoned: Yes/No

2. Whether reportable: Yes/No