

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRM-M-12420-2016 (O&M)  
Date of decision: 04.02.2020

Sahid Ahmad

... Petitioner

Vs.

State of Haryana

... Respondent

**CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN**

Present: Mr. R.S. Budhwar, Advocate  
for the petitioner.

Mr. Deepak Grewal, DAG, Haryana.

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**ARVIND SINGH SANGWAN, J. (ORAL)**

Prayer in this petition is for setting aside the order dated 16.03.2016 passed by the Additional Sessions Judge, vide which revision petition filed by the State, against the order dated 29.02.2016 passed by the Sub Divisional Judicial Magistrate, Bilaspur, releasing the vehicle of the petitioner on superdari, was allowed and the order of the SDJM was set aside.

Brief facts of the case are that one Tata Ace bearing registration No.HR-58B-5788 was apprehended in FIR No.20 dated 12.02.2016 under Sections 4B/8 of Punjab Prohibition of Cow Slaughter Act, 1955, Section 11 of Prevention of Cruelty against Animals, 1960 and Section 13 (2) of the Haryana Gauvansh Sanrakshan and Gausamvardhan Act, 2015, Police Station Khizrabad, with the allegations that the accused person namely Sahid Ahmad was found transporting the cows in violation of the aforesaid Acts.

The petitioner moved an application before the trial Court for releasing the vehicle in question on superdari and the same was allowed by the Sub Divisional Judicial Magistrate, vide order dated 29.02.2016, by passing the following order: -

*“Heard, the applicant has submitted before the Court the original Registration Certificate which shows that he is the registered owner of the vehicle in question. In the police report, it is not stated that the vehicle has been confiscated under the orders of the competent authority as per the provisions contained in the Gau Sanrakshan and Sanwardhan Act, 2015. It is not stated in the report that the vehicle is required for the purposes of investigation, in the above circumstances, the applicant being the registered owner, is entitled to possession of the vehicle. Hence, the applicant is directed to furnish superdaginama in the sum of Rs.5,00,000/- with one surety in the like amount. Superdaginama and surety bond furnished, accepted and attested. Let the vehicle TATA ACE bearing Registration No.HR58B-5788 be released in favour of the applicant Sahid Ahmad. The applicant. Superdar is directed to produce the vehicle before the court as and when ordered to do so. The applicant/Superdar is further directed not to sell the vehicle in question during the trial without permission of the court and not to change the colour or shape of the same during the trial. The original R.C. be retained on the judicial file. Ordered accordingly.”*

Thereafter, the State filed a revision petition before the Court of

Sessions, challenging the order passed by the SDJM. The revisional Court, vide impugned order dated 16.03.2016, allowed the revision petition and set aside the order passed by the SDJM, only on the ground that SDJM has no power to release the vehicle in question, in case of non-compliance of the conditions specified under Section 17 of the Haryana Gauvansh Sanrakshan and Gausamvardhan Act, 2015.

Present petition has been filed challenging the impugned order dated 16.03.2016 passed by the Additional Sessions Judge.

Learned counsel for the petitioner submits that vide order dated 12.10.2017, while issuing notice of motion, operation of the impugned order dated 16.03.2016 was stayed by this Court and in the intervening period, the vehicle was released on superdari and the same is still in possession of the petitioner. It is further submitted that since the time, when the vehicle was released by the trial Court, he has not misused the same and is not involved in any other case of similar nature subsequent to registration of the present FIR and it being a commercial vehicle, it is only source of income of the petitioner and therefore, the impugned order dated 16.03.2016 may be set aside.

Learned counsel for the petitioner has further submitted that since as per Section 17 of the Haryana Gauvansh Sanrakshan and Gausamvardhan Act, 2015, an officer, not below the rank of Sub Inspector, is empowered to confiscate the vehicle, whereas it was confiscated by a Head Constable and therefore, the impugned order passed by the revisional Court is liable to be set aside. It is further submitted that the FIR pertains to the year 2016 and for the last one year, the case is fixed for final arguments and the same is not being decided.

Learned counsel has relied upon an order dated 08.08.2017 passed in **CRM-M-28724-2017 (Harpal Singh Vs. State of Haryana)**, where the following observations have been made: -

*“Learned counsel for the petitioner contends that Amendment of Haryana Gauvansh Sanrakshan and Gausamvardhan Act, 2015 (hereinafter referred to as “the Act”), is in process and in a similar case, a co-ordinate Bench of this Court by the order dated 16.01.2017 passed in **CRM No. M- 37389 of 2016** titled as “**Isran v. State of Haryana**” had also directed the release of vehicle of the petitioner therein subject to the satisfaction of trial Court.*

*In support of his submissions, he has also placed reliance upon the judgment of Division Bench of this Court in the case of “**Mainpal v. State of Haryana and others**” CWP No.19153 of 2016 decided on 30.05.2017.*

*Learned State counsel does not controvert the submissions made by learned counsel for the petitioner and states that the amendment of the Act is under process.*

*Consequently, the petition is allowed and the impugned orders dated 06.03.2017 (Annexure P-4) and 21.04.2017 (Annexure P-6) are set-aside. The vehicle i.e truck bearing registration No. HR99YV(T)1534 shall be released on superdari subject to the satisfaction of trial Court/Duty Magistrate.”*

Similar orders have been passed in **CRM-M-3881-2017 (Kulwinder Singh Vs. State of Haryana)**, in which vide order dated 31.05.2017, the vehicle was ordered to be released and in **CRM-M-37389-2016**

**(Isran Vs. State of Haryana)** vide order dated 16.01.2016, vehicle had been ordered to be released on superdari.

In reply, learned State counsel has submitted that the revisional Court had passed the order, considering the fact that the vehicle was not confiscated under Section 17 of the Haryana Gauvansh Sanrakshan and Gausamvardhan Act, 2015.

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

Considering the fact that the petitioner is owner in possession of the vehicle in question, in pursuance of the order dated 29.02.2016 passed by the trial Court since the year 2016 and he has not misused the concession or the terms and conditions of the superdari and also in view of the fact that the said vehicle is not involved in any other case subsequent to registration of the present FIR, present petition is allowed and the impugned order dated 16.03.2016 passed by the revisional Court is set aside.

**[ ARVIND SINGH SANGWAN ]**  
**JUDGE**

04.02.2020  
*vishnu*

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No