

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

CRM-M-19304-2020

Date of decision: 01.10.2020

Taroon @ Taarun Khan

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Argued by : Mr. Munfaid Khan, Advocate
for the petitioner.

Mr. Naveen Singh Panwar, DAG, Haryana
for the respondent-State.

ARUN KUMAR TYAGI, J

(The case has been taken up for hearing through video
conferencing.)

1. The petitioner has filed the present petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Cr.P.C.") for quashing of order dated 09.12.2019 passed by the learned Sessions Judge, Mewat in CRR No.1212 of 2019 titled as 'Taroon Vs. State of Haryana' upholding order dated 11.04.2019 passed by the learned Sub-Divisional Judicial Magistrate, Ferozepur Jhirka dismissing the application filed by the petitioner for release of pick-up bearing registration No. RJ-32-GC-1656 (for short, "the seized vehicle") on sapurdari in case FIR No.108 dated 13.03.2019 registered under Section 13(2) of the Haryana Gauthansh Sanrakshan and Gausamvardhan Act, 2015 (for short, "the 2015 Act"), Section 120-B of the Indian Penal Code, 1860 and Section 11 of the Prevention of Animal Sacrifice Act, 1959 at Police Station Ferozepur Jhirka, District Mewat.

2. The above said FIR was registered on written intimation

sent by HC Sarjudin to SHO, Police Station, Ferozepur Jhirka alleging that on 13.03.2019 at about 08:30 hours, the police party headed by him stopped the seized vehicle on the basis of secret information regarding involvement of petitioner Taroon and his co-accused in the business of cow slaughter. The driver and conductor of the seized vehicle fled from the spot. On checking, the seized vehicle was found carrying two oxen and four cows whose legs and mouth were tied with ropes mercilessly. On application filed by the investigating officer, the seized vehicle was confiscated vide order dated 11.04.2019 passed by the Sub-Divisional Magistrate, Ferozepur Jhirka. The petitioner being registered owner of the seized vehicle filed the application for release thereof on sapurdari which was dismissed by learned Sub-Divisional Judicial Magistrate, Ferozepur Jhirka vide order dated 11.04.2019. The petitioner challenged the order by filing CRR No.1212 of 2019 which was dismissed by learned Sessions Judge, Mewat vide order dated 09.12.2019.

3. Feeling aggrieved, the petitioner has filed the present petition for quashing of the impugned orders dated 11.04.2019 and 09.12.2019.

4. The petition has been opposed by the learned State counsel in terms of reply filed by way of affidavit of Chanderpal, HPS, Deputy Superintendent of Police, Ferozepur Jhirka, District Mewat.

5. I have heard learned counsel for the petitioner and learned State counsel and gone through the relevant record.

6. Learned counsel for the petitioner has argued that the seized vehicle is lying in the police station for more than one year and

four months in idle condition which will damage the engine and tyres. No useful purpose will be served by keeping the seized vehicle idle in police station for a long period as the seized vehicle will become junk. The seized vehicle is the only source of the livelihood of the petitioner. All the offences mentioned in the FIR are triable by Judicial Magistrate First Class, Ferozepur Jhirka who is competent to pass an order for release of seized vehicle on sapurdari. The Sub Divisional Magistrate, Ferozepur Jhirka could pass order for confiscation of the seized vehicle only on completion of the trial and conviction of the accused driver and conductor. Order dated 11.04.2019 passed by the Sub Divisional Magistrate, Ferozepur Jhirka is illegal. The trial of the case will take long time. In **Sunderbhai Ambalal Desai Vs. State of Gujarat 2003 (1) RCR CrL 380** Hon'ble Supreme Court has favoured release of vehicles on sapurdari as parking the same in idle condition in the police station may reduce the same to junk. In **CRM-M-14463-2019** titled as '**Azhar Hussain Vs. State of Haryana**' decided on 14.01.2020; **CRR-4013-2017** titled as '**Mohamad Salman Vs. State of Haryana**' decided on 14.11.2017; **CRM-M-28724-2017** titled as '**Harpal Singh Vs. State of Haryana**' decided on 08.08.2017; **CRM-M-37389-2016** titled as '**Isran Vs. State of Haryana**' decided on 16.01.2017; **CWP-19153-2016** titled as '**Main Pal Vs. State of Haryana and others**' decided on 30.05.2017; **CRM-M-12235-2017** titled as '**Balbir Vs. State of Haryana**' decided on 17.04.2017 and **CRM-M-3881-2017** titled as '**Kulwinder Singh Vs. State of Haryana**' decided on 31.05.2017 this Court also ordered release of the vehicles seized under the 2015 Act on sapurdari. The petitioner is entitled to release of his

seized vehicle on sapurdari and the application filed by the petitioner for release of his seized vehicle on sapurdari has been wrongly dismissed by the Courts below. The impugned orders being illegal may be set aside and the seized vehicle may be ordered to be released on sapurdari. In support of his arguments learned counsel for the petitioner has also placed reliance on the observations in **Ratnakar Behra Vs. State of Odisha, CRLMC No.985 of 2020 decided on 05.08.2020.**

7. On the other hand, learned State counsel has argued that Section 17 of the 2015 Act bars the jurisdiction of the Criminal Court regarding release of vehicles confiscated under Section 17 of the 2015 Act. The seized vehicle has been confiscated under Section 17(2) of the 2015 Act vide order dated 11.04.2019 passed by Sub Divisional Magistrate, Ferozepur Jhirka. The proceedings for confiscation of the seized vehicle are independent of the prosecution for the offences committed. The confiscation of the seized vehicle engaged in transportation of cows exclusively falls within the jurisdiction of the Sub-Divisional Magistrate in terms of the various provisions of the Act. The petitioner can file appeal before the Deputy Commissioner, Mewat against the order of confiscation passed by the Sub-Divisional Magistrate, Ferozepur Jhirka. In view of the Special enactment the provisions of Sections 451, 452 and 457 of the Cr.P.C. are not applicable and jurisdiction of the Court of Sub-Divisional Judicial Magistrate, Ferozepur Jhirka is barred. The application and the revision petition have been rightly dismissed. The impugned orders do not suffer from any illegality. Therefore, the petition may be dismissed. In

support of his arguments, learned State counsel has relied on the observations in **Mustafa Vs. State of Utter Pradesh and others : AIR 2019 Supreme Court 3949.**

8. On consideration of the submissions made by learned counsel for the parties and the material on record, I am of the considered view that the impugned orders do not suffer from any illegality and the petition is liable to be dismissed.

9. The 2015 Act was enacted to provide for Gauvansh Sanrakshan and Gausamvardhan and to establish institutions to accept, keep, maintain and care the infirm, injured, stray and uneconomic cows in the State of Haryana. Section 3 of the 2015 Act prohibits cow slaughter while Section 4 of the 2015 Act specifies the exceptions burden of proving which lies under Section 14 of the 2015 Act on the accused. Section 5 of the 2015 Act restricts export of cows for slaughter while Section 8 of the 2015 Act prohibits sale of beef. Section 13 of the 2015 Act codifies the offences which are classified by Section 15 of the 2015 Act as cognizable and non-bailable. Section 17 of the 2015 Act, which provides for confiscation of vehicles, 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 seized 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 seized in connection with the commission of any offence punishable under this Act, a report about the same, without unreasonable delay, shall 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 seized, 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 then 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 subsection (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."

22.11.2016 ordered confiscation of truck owned by appellant-Mustafa for violation of Section 60 and 72 of the United Provinces Excise Act, 1910 with an option to pay Rs.4,50,000/- as market value of the truck. The appeal filed by him was dismissed by the concerned District Judge vide order dated 03.08.2017. As the challenge to the above said orders before the High Court also remained unsuccessful, appeal against the same was filed before Hon'ble Supreme Court. Hon'ble Supreme Court referred to the relevant statutory provisions including Section 72 of the United Provinces Excise Act, 1910. It will be appropriate to reproduce Section 72 of the United Provinces Excise Act, 1910 as under:-

“72. What things are liable to confiscation. - (1)

Whenever an offence punishable under this Act has been committed-

- (a) every intoxicant in respect of which such offence has been committed;
- (b) every still, utensil, implement or apparatus and all materials by means of which such offence has been committed;
- (c) every intoxicant lawfully imported, transported, manufactured, held in possession or sold along with or in addition to any intoxicant liable to confiscation under clause (a);
- (d) every receptacle, package and covering in which any intoxicant as aforesaid or any materials, still, utensil, implement or apparatus is or are found, together with the other contents (if any) of such receptacle or package;
- (e) every animal, cart, vessel or other conveyance used in carrying such receptacle or package shall be liable to confiscation.

(2) Where anything or animal is seized under any provision of this Act and the Collector is satisfied

for reasons to be recorded that an offence has been committed due to which such thing or animal has become liable to confiscation under sub-section (1), he may order confiscation of such thing or animal whether or not a prosecution for such offence has been instituted:

Provided that in the case of anything (except an intoxicant) or animal referred to in sub-section (1), the owner thereof shall be given an option to pay in lieu of its confiscation such fine as the Collector thinks adequate not exceeding its market value on the date of its seizure.

(3) Where the Collector on receiving report of seizure or on inspection of the seized things, including any animal, cart, vessel or other conveyance, is of the opinion that "any such things or animal is subject to speedy wear and tear or natural decay or it is otherwise expedient in the public interest so to do", he may order such things (except an intoxicant) or animal to be sold at the market price by auction or otherwise.

(4) Where any such things or animals is sold as aforesaid, and-

(a) no order of confiscation is ultimately passed or maintained by the Collector under sub-section (2) or on review under sub-section (6); or

(b) an order passed on appeal under sub-section (7) so requires; or

(c) in the case of a prosecution being instituted for the offence in respect of which the thing or the animal is seized, "the order of the court so requires"; the sale proceeds after deducting the expenses of the sale shall be paid to the person found entitled thereto.

(5) (a) No order of confiscation under this section

shall be made unless the owner thereof or the person from whom it is seized is given-

(i) a notice in writing informing him of the grounds on which such confiscation is proposed;

(ii) an opportunity of making a representation in writing within such reasonable time as may be specified in the notice; and

(iii) a reasonable opportunity of being heard in the matter.

(b) Without prejudice to the provisions of clause (a), no order confiscating any animal, cart, vessel, or other conveyance shall be made if the owner thereof proves to the satisfaction of the Collector that it was used in carrying the contraband goods without the knowledge or connivance of the owner, his agent, if any, and the person in charge of the animal, cart, vessel or other conveyance and that each of them had taken all reasonable and necessary precautions against such use.

(c) Where on an application in that behalf being made to the Collector within one month from any order of confiscation made under sub-section (2), or as the case may be, after issuing notice on his own motion within one month from the order under the sub-section refusing confiscation to the owner of the thing or animal seized or to the person from whose possession it was seized, to show cause why the order should not be reviewed, and after giving him a reasonable opportunity of being heard, the Collector is satisfied that the order suffers from a mistake apparent on the face of the record including any mistake of law, he may pass such order on review as he thinks fit.

(6) Where on an application in that behalf being made to Collector within one month from any order

of confiscation made under sub-section (2), or as the case may be, after issuing notice on his own motion within one month from the order under the sub-section refusing confiscation to the owner of the thing or animal seized or to the person from whose possession it was seized to show cause why the order should not be reviewed, and after giving him a reasonable opportunity of being heard, the Collector is satisfied that the order suffers from the mistake apparent on the face of the record including any mistake of law, he may pass such order on review as he thinks fit.

(7) Any person aggrieved by an order of the confiscation under subsection (2) or sub-section (6) may, within one month from the date of the communication to him of such order, appeal to such judicial authority as the State Government may appoint in this behalf and the judicial authority shall, after giving an opportunity to the appellant to be heard, pass such order as it may think fit, confirming, modifying or annulling the order appealed against.

(8) Where a prosecution is instituted for the offence in relation to which such confiscation was ordered the thing or animal shall subject to the provisions of subsection (4) be disposed of in accordance with the order of the Court.

(9) No order of confiscation made by the Collector under this section shall prevent the infliction of any punishment to which the person affected thereby may be liable under this Act."

Hon'ble Supreme Court held that the power of the Collector to confiscate the seized vehicle was independent of the prosecution and the punishment consequent to the prosecution is

distinct from the order of confiscation passed by the Collector. In terms of Sub-Section (2) of Section 4 of the Cr.P.C. the offences under the United Provinces Excise Act, 1910 were to be dealt with according to the provisions of the Cr.P.C. but subject to the provisions of the United Provinces Excise Act, 1910, which were saved by Section 5 of the Cr.P.C., regulating the manner or place of investigating, inquiring into, trying or dealing with such offences. Since the procedure of the confiscation of the vehicle was prescribed under the United Provinces Excise Act, 1910, the provisions of the the United Provinces Excise Act, 1910 were applicable and the power of release of the property produced before any criminal Court whether interim or final in terms of Sections 451, 452 or 457 of the Cr.P.C. were not available to the Court except the order in respect of distribution of sale proceeds and the Collector had exclusive jurisdiction to confiscate the vehicle subject to order under Sub-Sections (4) and (8) of Section 72 of the United Provinces Excise Act, 1910. Accordingly, while dismissing the appeal the matter was remitted to High Court to exercise power of judicial review over the order of confiscation passed by the Collector as affirmed by the District Judge.

11. Provisions made in Section 17 of the 2015 Act are similar although the same also have some material differences. Section 17 (2) of the 2015 Act empowers the competent authority, having jurisdiction over the area where the said vehicle was seized, to order confiscation of the seized vehicle on being satisfied that the said vehicle was used for commission of offence under the 2015 Act. However, as required by the proviso Section 17 (2) of the 2015 Act the competent authority is

bound to give reasonable opportunity of being heard to the owner of the seized vehicle before ordering confiscation of the seized vehicle. Section 17 (4) of the 2015 Act confers power on the competent authority to direct sale of the confiscated vehicle by public auction at any time if the Competent Authority is of the opinion that it is expedient in public interest that the confiscated vehicle be sold by public auction. Proviso to Section 17 (4) of the 2015 requires 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. In view of the provisions of Section 17 (4) of the 2015 Act such sale of the seized vehicle can be at any time after confiscation by the competent Authority under Section 17 (2) of the 2015 Act and not prior thereto on seizure by a police officer not below the rank of Sub-Inspector or any person authorized in this behalf by the Government. Section 17 (5) of the 2015 Act enables “Any person aggrieved” by an order made by the competent authority under subsection (2) or sub-section (4) to prefer an appeal to the Deputy Commissioner of the district concerned within a period of thirty days from the date of such order. The 2015 Act prescribes an independent procedure for confiscation distinct from criminal proceedings for prosecution of the offenders. The intention of prescribing separate proceedings is to provide a deterrent mechanism and to stop further misuse of the seized vehicle.

12. The offences under the 2015 Act are to be dealt with in terms of sub-section (2) of Section 4 of the Cr.P.C. according to the provisions of the Cr.P.C. but subject to the provisions of the 2015 Act

regulating the manner or place of investigating, inquiring into, trying or dealing with such offences saved by Section 5 of the Cr.P.C. which provides for saving of special or local laws or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.

13. Section 17 (2) of the 2015 Act empowers the competent authority to order confiscation of the seized vehicle whether or not a prosecution is instituted for commission of such offence. Section 17(6) of the 2015 Act clarifies that 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 the provisions of the 2015 Act. Since the power of the Competent Authority to confiscate the seized vehicle is independent of the prosecution, the confiscation proceedings are different from the criminal proceedings for prosecution of the offenders and are not dependent on conviction of the offenders on conclusion thereof. In **State of Madhya Pradesh Vs. Uday Singh : AIR 2019 Supreme Court 1597; State of Madhya Pradesh and Others v. Kallo Bai : (2017) 14 SCC 502 and Divisional Forest Officer and Another v. G. V. Sudhakar Rao and Others : (1985) 4 SCC 573** Hon'ble Supreme Court approved the contention of the criminal proceedings being distinct from the confiscation proceedings. In **Yogendra Kumar Jaiswal Vs. State of Bihar : (2016) 3 SCC 183** Hon'ble Supreme Court while dealing with the confiscation of property under the Orissa Special Courts Act, 2006 and the Bihar Special Courts Act, 2009 repelled the contention of confiscation being a pre-trial punishment.

14. Section 17(3) of the 2015 Act provides that 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. Since the procedure of confiscation of the vehicle is prescribed under the 2015 Act, the provisions of Sections 451, 452 or 457 contained in Chapter XXXIV of the Cr.P.C. being inconsistent therewith will not be applicable. For judicial precedents in this regard reference may be made to **State of Karnataka v. K. A. Kunchindammed, (2002) 9 SCC 90** and **Mustafa's case (supra)**. Due to inapplicability of the provisions of Sections 451, 452 or 457 of the Cr.P.C. on account of being inconsistent with the provisions contained in the 2015 Act, Judicial Magistrate First Class, Ferozepur Jhirka before whom the prosecution has been/is to be lodged, will not have jurisdiction to release the seized vehicle whether interim or final not only pending trial but also after the conclusion of the trial.

15. In view of the observations in **Mustafa's case (supra)** and provisions of Section 17 of the 2015 Act, observations in **Sunderbhai Ambalal Desai's case (supra)** and **Ratnakar Behra's case (supra)** are not applicable and are not of any help to the petitioner. In **CRM-M-14463-2019** titled as '**Azhar Hussain Vs. State of Haryana**' decided on 14.01.2020; **CRR-4013-2017** titled as '**Mohamad Salman Vs. State of Haryana**' decided on 14.11.2017; **CRM-M-28724-2017** titled as '**Harpal Singh Vs. State of Haryana**' decided on 08.08.2017; **CRM-M-37389-2016** titled as '**Isran Vs. State of**

Haryana' decided on 16.01.2017; CWP-19153-2016 titled as 'Main Pal Vs. State of Haryana and others' decided on 30.05.2017; CRM-M-12235-2017 titled as 'Balbir Vs. State of Haryana' decided on 17.04.2017 and CRM-M-3881-2017 titled as 'Kulwinder Singh Vs. State of Haryana' decided on 31.05.2017 the Co-ordinate Benches had ordered release of the vehicle seized on sapurdari due to pendency of amendments to the 2015 Act and the observations therein are also not applicable and are not of any help to the petitioner in the present case.

16. It follows from the above discussion that the impugned orders do not suffer from any illegality and no interference with the same is warranted in exercise of the inherent powers under Section 482 of the Cr.P.C.

17. Consequently, the present petition being devoid of any merit is dismissed. However, the petitioner shall be at liberty to avail his remedy of filing appeal against the confiscation order before the Appellate Authority-Deputy Commissioner, Mewat and the time taken in the present proceedings shall be liable to be excluded.

18. Before parting with the case, it may be observed that in the present case the seized vehicle is stated to have been confiscated by the Sub Divisional Magistrate, Ferozepur Jhirka vide order dated 11.04.2019 without giving of opportunity of being heard to the petitioner. Further, it appears that after confiscation no proceedings have been taken for ordering sale of the confiscated vehicle by public auction after hearing the owner. The petitioner has been relegated to his remedy of filing appeal against the confiscation order. Yet, as observed

in **Sunderbhai Ambalal Desai's case (supra)**, idle parking of the confiscated vehicles in the police station in such cases will reduce the same to junk which will benefit neither the owner nor the State. No person can be deprived of his life, liberty and property except in accordance with just and reasonable procedure prescribed by law. The confiscation proceedings of the vehicles are required to be concluded within reasonable time by following the prescribed procedure and can not be kept pending for unreasonable period of time. It will also be expedient in the interest of justice that on confiscation, the confiscated vehicles are sold by public auction and proceeds thereof are deposited in the Treasury. Such public auction of the confiscated vehicles will also safeguard the interest of the State as in the eventuality of confiscation order being set aside by the Appellate Authority, this Court or Hon'ble Supreme Court, such proceeds shall be payable to the owner but in the absence of such sale of the confiscated vehicles by public auction the State may be liable to pay compensation to the owner equivalent to market value of the vehicle released from confiscation at the time of its seizure by the police as determined under the Income Tax Act and Rules after making requisite deductions towards depreciation. Therefore, the Chief Secretary to Haryana Government and the Director General of Police, Haryana are directed to issue appropriate instructions for expeditious disposal of confiscation proceedings and sale by public auction of the vehicles confiscated under the orders of the Competent Authorities.

01.10.2020

Vinay

(ARUN KUMAR TYAGI)
JUDGE

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