

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

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CRM-M-31438-2020
Date of decision: 07.10.2020

DALJIT SINGHPetitioner

Versus

STATE OF PUNJABRespondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Gurjinder Singh Thind, Advocate
for the petitioner.

ARUN KUMAR TYAGI, J. (ORAL)

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

1. Petitioner-**Daljit Singh** 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 17.09.2020 passed by learned Sessions Judge, Patiala (Annexure P-1) in CRR/110/2020 titled as 'Daljit Singh Vs. State of Punjab' and modification of the order dated 11.09.2020 passed by the learned Judicial Magistrate First Class (Duty), Rajpura (Annexure P-2) in case FIR No. 95 dated 27.07.2020 under Sections 61 (1) and 78 (2) of the Punjab Excise Act, 1914 registered at Police Station Sadar Rajpura, District Patiala.

2. Briefly stated, the facts giving rise to filing of the petition are that on 27.07.2020 Swift Car bearing registration No. PB-10FD-6513 (for short 'the car') was intercepted by the police party headed by ASI Sukhwant Singh present near Jashan Hotel, Main G.T. Road,

Rajpura. The driver of the car fled from the spot. On search 300 bottles of country made liquor make 'First Choice' meant for sale in Haryana only were recovered from the same. Samples were taken and the samples, remaining liquor recovered and the car were taken into the possession of police. The petitioner being registered owner of the car applied for release of the same on sapurdari. Vide order dated 11.09.2020 learned Judicial Magistrate First Class (Duty) Rajpura ordered release of the car on sapurdari to the petitioner on usual terms and conditions on furnishing of Bank Guarantee of Rs. 1,00,000/-. The petitioner challenged the same by filling the revision petition which was dismissed by learned Sessions Judge, Patiala vide order dated 17.09.2020.

3. Feeling aggrieved, the petitioner has filed the present petition for quashing of order dated 17.09.2020 and modification of order dated 11.09.2020.

4. Notice of motion.

5. Pursuant to supply of advance copy, Mr. Amit Mehta, Senior DAG, Punjab has appeared and accepted notice on behalf of the respondent.

6. I have heard learned Counsel for the petitioner and learned State Counsel and gone through the relevant record.

7. Learned Counsel for the petitioner has submitted that the car is parked idle in the police station and if not used will be converted to junk. Provisions of Section 451 of the Cr.P.C. are applicable to release of the car during pendency of the investigation and trial. The petitioner being registered owner is entitled to release of car on

sapurdari. Learned Judicial Magistrate First Class (Duty) Rajpura vide order dated 11.09.2020 wrongly ordered release of the car on sapurdari on furnishing of bank guarantee instead of sapurdari bonds. The petitioner is unable to furnish the bank guarantee due to his poor financial conditions and the car may be ordered to be released on sapurdari on furnishing of sapurdari bonds by modification of the above said order. Revision petition filed by the petitioner against the above said order has been wrongly dismissed by learned Sessions Judge, Patiala vide order dated 17.09.2020. Therefore, impugned order dated 17.09.2020 may be set aside and impugned order dated 11.09.2020 may be modified.

8. On the other hand learned State Counsel has submitted that order for release of car on furnishing of bank guarantee has been rightly passed in view of third proviso to sub-section (2) of Section 78 of the Punjab Excise Act, 1914. The impugned orders do not suffer from any illegality. Therefore, the petition may be dismissed.

9. On consideration of the submissions made by learned Counsel for the petitioner and learned State Counsel and perusal of 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.

10. Before dwelling upon the submissions made by learned Counsel for the parties, it will be appropriate to refer to the relevant statutory provisions.

11. Sections 4, 5 and 451 of the Cr.P.C. which are relevant to the decision of the present petition read as under :-

4.Trial of offences under the Indian Penal Code and other laws.—(1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

5. Saving.—Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.

451.Order for custody and disposal of property pending trial in certain cases.—When any property is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

Explanation.—For the purposes of this section, “property” includes—

(a) property of any kind or document which is produced before the Court or which is in its custody.

(b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence.

12. Section 78 of the Punjab Excise Act, 1914, which provides for confiscation of article in respect of which offence is committed, reads as under :

78. Confiscation of article in respect of which offence committed.— (1) Whenever an offence punishable under this Act has been committed;

(a) every intoxicant or excise bottle in respect of which such offence has been committed together with the contents of such bottle, if any;

(b) every still, utensil, implement or apparatus and all material in respect of or by means of which such, offence has been committed;

(c) every intoxicant or excise bottle lawfully imported, transported, manufactured, had in possession or sold along with, or in addition to, any intoxicant or excise bottle liable to confiscation under clause (a);

(d) every receptacle, package and covering in which any intoxicant for excise bottle, materials, still, utensil, implement or apparatus as aforesaid is or are found together with the other contents (if any) of such receptacle or package; and

(e) every animal, cart, vessel, raft or other conveyance used in carrying such, receptacle, or package, covering or articles as aforesaid;

shall be liable to confiscation:

Provided that when it is proved that the receptacles, animals or other articles specified in clauses (d) and (e) are not the property of offenders, they shall not be liable to confiscation if the owner thereof established that he had no reason to believe that such offence was being or was likely to be committed.

(2) When confiscation may be ordered.- When in the trial of any offence punishable under this Act the Magistrate decides that anything is liable to confiscation under sub-section (1), he may order confiscation;

Provided that in lieu of ordering confiscation he may give the owner of the thing liable to be confiscated an option to pay such fine as the Magistrate thinks fit.

[Provided further that in cases where the quantity of liquor found at the time or in the course of detection of such offence exceeds Ninety bulk liters, in lieu of ordering confiscation of conveyance the Magistrate may give the owner of the conveyance liable to be confiscated an option to pay an amount equal to the value thereof as estimated by him.]

[(3) Such officer or authority, as specified by the State Government for composition of offences under sub-section (1) of Section 81, may confiscate liquor in respect of which offence has been committed.

(4) When the Officer or authority, as specified by the State Government for composition of offences under sub section (1) of Section 81, upon production before him of liquor, conveyance etc. or on receipt of a report about such seizure, as the case may be, is satisfied that an offence has been committed and where the quantity of liquor found at the time or in the course of detection of such offence exceeds

ninety bulk litres he may, on the grounds to be recorded in writing, order the confiscation of the conveyance etc. so seized. He may, during the pendency of the proceedings for such confiscation also pass an order of interim nature for the custody, disposal, etc. of the confiscated liquor, conveyance etc. as may appear to him to be necessary in the circumstances of the case :

Provided that such officer or authority shall not pass an order for confiscation of conveyance without affording an opportunity of being heard to the person from whom conveyance was seized and to any other person who may appear before such officer or authority with a claim of an interest in the same :

Provided further that such officer or authority may release the conveyance so confiscated, on payment of the value thereof as estimated by the same authority :

Provided further that in case the owner of confiscated vehicle does not get the vehicle released within a period of thirty days from the decision of the case, such authority may proceed to auction the confiscated conveyance. The amount received from auction, after deducting the expenditure incurred on it, shall be deposited in the Government treasury.]

13. Due to the Punjab Excise Act, 1914 being special enactment saved by Section 5 of the Cr.P.C. the offences thereunder have to be investigated, inquired into, tried and otherwise dealt with in terms of Section 4(2) of the Cr.P.C. in accordance with the provisions of the Cr.P.C. subject to the provisions of the Punjab Excise Act, 1914. Therefore, application of the provisions contained in Section 451 of the Cr.P.C. to the present case will be subject to the provisions of Section 78 of the Punjab Excise Act, 1914. For judicial precedents in this regard reference may be made to **State of Karnataka v. K. A. Kunchindammed, (2002) 9 SCC 90** and **Mustafa Vs. State of Uttar Pradesh and others : AIR 2019 Supreme Court 3949**. In view of

third proviso to Sub Section (2) of Section 78 of the Punjab Excise Act, 1914 the car can be released during pendency of trial on submission of security in form of cash security or bank guarantee equivalent to the value of the car and cannot be released on sapurdari on submission of usual personal sapurdari bond with bond of one surety as is the practice in cases involving the offences under the Indian Penal Code, 1860. Learned Judicial Magistrate First Class (Duty) Rajpura has vide order dated 11.09.2020 rightly ordered release of the car on sapurdari on furnishing of bank guarantee instead of sapurdari bonds and the revision petition has been rightly dismissed by learned Sessions Judge, Patiala vide order dated 17.09.2020 and the impugned orders do not suffer from any illegality warranting interference by this Court in exercise of its inherent jurisdiction.

14. In view of the above discussion, the petition being devoid of merit is hereby dismissed.

07.10.2020
kavneet singh

(ARUN KUMAR TYAGI)
JUDGE

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