

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.22079 of 2021
Date of decision: 20th August, 2021.

Harjit Singh

...Petitioner

Versus

State of Punjab

...Respondent

(Heard through Video-Conferencing)

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present: Mr.Shakti Mehta, Advocate,
for the petitioner.

* * * * *

MEENAKSHI I. MEHTA, J.

By way of the instant petition, the petitioner has invoked the jurisdiction of this Court under Section 482 Cr.P.C for seeking the quashing of the judgment as rendered by learned Sessions Judge, Patiala, on 23.09.2019 (Annexure P-3) whereby the revision petition preferred by him against the order dated 15.06.2019 (Annexure P-2) passed by Judicial Magistrate Ist Class, Samana (for short "JMIC") has been dismissed.

Shorn and short of unnecessary details, the facts, leading to the filing of this petition, are that one FIR bearing No.19 dated 17.04.2019 was registered at Police Station Ghagga, District Patiala, under Section 61 of the Excise Act, with the allegations that 40 boxes, each containing 12 bottles of country-made liquor, were recovered from the Car bearing Registration No.PB10-DP-5390. The above-said boxes as well as the Car were taken into

possession by the police. The petitioner, while claiming himself to be the registered owner of the said Car, moved an application before the JMIC for seeking the release of this vehicle on superdari. Vide the order Annexure P-2, this application was allowed and the said Car was ordered to be released on superdari in favour of the petitioner on his furnishing the personal superdari bonds, along-with the bank guarantee in the sum of Rs.2 lacs, subject to the conditions as mentioned therein. Feeling aggrieved by the condition qua furnishing the bank guarantee, the petitioner preferred a Criminal Revision Petition before the Sessions Court and the same has been dismissed vide the impugned judgment Annexure P-3.

I have heard learned counsel for the petitioner in this petition at the preliminary stage and have also perused the file thoroughly.

Learned counsel for the petitioner contends that the above-discussed condition regarding furnishing the bank guarantee to the tune of Rs.2 lacs for the release of the above-said Car on superdari, is quite harsh and irrational because the petitioner is not involved in the afore-mentioned criminal case and therefore, the impugned judgment (Annexure P-3) passed by the Revisional Court dismissing his revision petition preferred against the order Annexure P-2 deserves to be quashed.

However, I do not find this contention to be tenable because Section 78 of the Excise Act provides as under:-

“ 78. Confiscation of article in respect of which offence committed:-

(a).....

(b).....

(c).....

(d).....

(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:

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

Explanation: "Public undertaking vehicles" means any vehicle owned/run by:-

(i) the Central Government or a State Government;

(ii) any municipality or any corporation or company owned or controlled by the Central Government and one or more State Governments for the purpose of providing transport and goods services.]

(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
2(:)

3 *[Provided further that in cases where the quantity of liquor found at the time or in the course of detection of such offence exceeds twenty-seven bulk liters of country liquor and foreign liquor, the Magistrate shall order the confiscation of conveyance. However, 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 the Magistrate:*

Provided further that during pendency of trial, conveyance “shall only” be released on submission of security (in form of cash security or bank guarantee) equivalent to the value of the conveyance thereof.]”

The use of the words “**shall only**” in the afore-mentioned provisions speaks volumes of the intent of the legislature to require the furnishing of the cash security or the bank guarantee equivalent to the value of the vehicle involved in the offence under the Excise Act. When tested on the touch-stone of the above-discussed provisions, the impugned judgment Annexure P-3 passed by the Revisional Court, can not be held to be suffering from any illegality, irregularity and infirmity so as to warrant any

interference by this Court.

As a sequel to the fore-going discussion, it follows that the instant petition, being sans any merit, deserves dismissal. Resultantly, the same stands dismissed accordingly.

(MEENAKSHI I. MEHTA)
JUDGE

20.08.2021.
seema

Whether speaking/reasoned?	Yes
Whether Reportable?	No