

239 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-18413-2020
Date of Decision:22.09.2021

Sajjan Singh

...Petitioner

Versus

State of Haryana

...Respondents

CORAM: HON'BLE MR. JUSTICE SANT PARKASH

Present: Mr. Harkesh Manuja, Advocate,
for the petitioner.

Mr. Bhupender Singh, DAG, Haryana.

[The aforesaid presence is being recorded through video conferencing since the proceedings are being conducted in virtual court.]

SANT PARKASH, J.

By way of filing the present petition under Section 482 Cr.P.C., the petitioner prays for quashing of order dated 01.07.2020 (P-6) passed by the learned Additional Sessions Judge, Kaithal and order dated 17.06.2020 (P-4) passed by the learned Judicial Magistrate 1st Class, Kaithal, whereby an application for release of vehicle/car bearing registration No. HR 83-6003, owned by the petitioner, has been rejected.

Brief facts of the case are that the petitioner was allegedly involved along with other accomplices in selling country made liquor. The vehicle in question was confiscated, in which five cases of country made liquor Malta, six cases of quarter of country made liquor make Malta, eight bottles and fourteen half of country liquor made Sahi were recovered. In this regard, an FIR No.118 dated 19.04.2020 under Sections 120-B, 188,

269 IPC and Section 61 of the Punjab Excise Act, 1914 (for short ' the Act') as well as Section 51 of the Disaster Management Act, 2005 at Police Station Pundri, Kaithal was registered.

Learned counsel for the petitioner submits that the petitioner is a registered owner of the vehicle in question. He further submits that the petitioner is a liquor contractor, and the liquor found in the said vehicle was not non-duty paid liquor. He further submits that the embargo under Section 72-F of the Act would not be applicable in the present case inasmuch as the offence alleged in the FIR does not fall in the category of a major offence.

Per contra, learned counsel for the State submits that the lower courts below have rightly dismissed the application moved by the petitioner for release of the vehicle in question by invoking the provisions contained in Section 72-F of the Act, which provides seizure of intoxicant, apparatus, vehicle or other material involved in any major offences under the Excise Act.

This Court has heard the learned counsel for the parties and perused the case file.

As per allegations levelled in the FIR, the vehicle in question was found involved in selling country made liquor by the petitioner along with his accomplices. During search of the said vehicle, huge number of boxes containing country made liquor were recovered in the dicky of the vehicle. Accordingly, the said vehicle was confiscated by the investigating agency. The petitioner filed an application in the Court of learned Judicial Magistrate 1st Class, Kaithal for releasing the vehicle on superdari, however,

the same was dismissed vide order dated 17.06.2020 (P-4). Revision petition against the said order was also dismissed by the learned Sessions Judge, Kaithal vide order dated 01.07.2020 (P-6).

The main ground of rejecting the release of aforesaid vehicle on superdari is that Section 72-F of the Act prohibits the release of such vehicle, which is involved in any major offence. Section 72-F of the Act reads as under:-

“72-F. Certain things liable to be seized- Where intoxicant, apparatus, vehicle or other material is seized, involved in any major offence under this Act, the same shall not be released but shall be disposed of in such manner, as may be prescribed.”

The definition of major offences has been elaborated in clause (15A) of Section 3 of the Act, which is reproduced as under:-

“(15A) major and minor offences

(a) major and minor offences

- (i) adulteration;
- (ii) possession, transport and sale of non-duty paid liquor, (NDPL);
- (iii) illicit manufacture, unlawful possession, transport and sale of liquor;
- (iv) rendering denatured spirit fit for human consumption
- (v) mixing noxious substance with liquor;
- (vi) tampering with sealed bottles;
- (vii) sale to minor;

From the plain reading of the aforesaid provision, it would be evidently crystal clear that the vehicle involved in any of the major offences, reproduced above, would not be released and would be subject to confiscation.

In the case in hand, it is case of the petitioner that the liquor was not non-duty paid liquor and this fact has not been denied by the learned counsel for the State. It is not the case of the respondents-State that the liquor was adulterated or it was illicitly manufactured or rendering denatured spirit fit for human consumption or mixing noxious substance with liquor or tampering with sealed bottles and lastly sale to the minor. Since the liquor was not non-duty paid liquor, it is not covered by any of the category enumerated in clause (15A) of Section 3 of the Act defining the major and minor offences.

Section 72 of the Act further provides that all offences punishable under the Act with imprisonment two years or more shall be non-bailable and cognizable and the provisions of Cr.P.C., 1973 shall be applied. The said section reads as under:-

“72. Certain offences to be non-bailable.- All offences punishable under this Act imprisonment with two years or more, shall be non-bailable and cognizable and the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) with respect to non-bailable and cognizable offences, shall apply to those offences.”

Thus, it is not disputed that provisions of Cr.P.C., are applicable and the provisions under Section 451 Cr.P.C., which provides custody and disposal of the property pending trial in certain cases would come into play and the procedure prescribed for releasing the goods seized by the police. Section 78 of the Act further provides that the article for which the offence had been committed shall be liable for confiscation and the same may be ordered. The proviso provides that the excise bottle and the vehicle if not being the property of the offenders shall not be liable to confiscation if the owner establishes that he exercised due diligence to make

sure that such offence was not committed. The said section 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 or 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, vehicle, vessel, raft or other conveyance except public undertaking vehicles 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, vehicles, animals or other articles specified in clauses (d) and (e) except public undertaking vehicles are not the property of offenders, they shall not be liable to confiscation if the owner thereof establishes that he exercised due diligence to make sure that such offence was not 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.

(3) When an offence under clause (aaa) of sub-section (1) of section

61 is committed under this Act and the Collector decides that anything is liable to confiscation under subsection (1), he may order the confiscation.

Provided that in lieu of ordering confiscation under clause (e) of sub-section (1) the Collector may give the owner of the thing liable to be confiscated and option to pay such penalty as the Collector imposes under section 61 of this Act.”

Hon'ble the Supreme Court, while dealing with the issues of seized vehicle as well as liquor in **Sunderbhai Ambalal Desai Vs. State of Gujarat, AIR (2003) SC 638**, has observed as under:-

“15. Learned senior counsel Mr. Dholakia, appearing for the State of Gujarat further submitted that at present in the police station premises, number of vehicles are kept unattended and vehicles become junk day by day. It is his contention that appropriate directions should be given to the Magistrates who are dealing with such questions to hand over such vehicles to its owner or to the person from whom the said vehicles are seized by taking appropriate bond and the guarantee for the return of the said vehicles if required by the Court at any point of time.

16. However, the learned counsel appearing for the petitioners submitted that this question of handing over vehicles to the person from whom it is seized or to its true owner is always a matter of litigation and a lot of arguments are advanced by the concerned persons.

17. In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles.

18. In case where the vehicle is not claimed by the accused,

owner, or the insurance company or by third person, then such vehicle may be ordered to be auctioned by the Court. If the said vehicle is insured with the insurance company then insurance company be informed by the Court to take possession of the vehicle which is not claimed by the owner or a third person. If Insurance company fails to take possession, the vehicles may be sold as per the direction of the Court. The Court would pass such order within a period of six months from the date of production of the said vehicle before the Court. In any case, before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchnama should be prepared.

19. For articles such as seized liquor also, prompt action should be taken in disposing it of after preparing necessary panchnama. If sample is required to be taken, sample may kept properly after sending it to the chemical analyser, if required. But in no case, large quantity of liquor should be stored at the police station. No purpose is served by such storing.

20. Similarly for the Narcotic drugs also, for its identification, procedure under [Section 451](#) Cr.P.C. should be followed of recording evidence and disposal. Its identity could be on the basis of evidence recorded by the Magistrate. Samples also should be sent immediately to the Chemical Analyser so that subsequently, a contention may not be raised that the article which was seized was not the same.

21. However these powers are to be exercised by the concerned Magistrate. We hope and trust that the concerned Magistrate would take immediate action for seeing that powers under [Section 451](#) Cr.P.C. are properly and promptly exercised and articles are not kept for a long time at the police station, in any case, for not more than fifteen days to one month. This object can also be achieved if there is proper supervision by the Registry of the concerned High Court in seeing that the rules framed by the High Court with regard to

such articles are implemented properly.

Adjourned for three weeks.

Ordered accordingly.”

The afore-said view has also been reiterated by a Hon'ble Division Division of this Court in **Gurbinder Singh @ Shinder Vs State of Punjab, 2016 (4) RCR (Criminal) 492.**

From careful perusal of the findings reproduced above, it is clear that the necessary exercise should be carried out promptly and articles are not to be kept for a long time at the police station and there is no use to keep these articles in the police station till the trial is over. Similar reference was also made to seized vehicles. It is also not disputed that the vehicle in question is lying parked in the premises of the police station since 19.04.2020 and almost a period of 1 year and 05 months has lapsed. With the passage of time, it might be reduced to mere junk and may not be put to any use, in case of acquittal of the petitioner/accused. Hence, no useful purpose will be served as such to keep said quantity of liquor in the police station alongwith the vehicle in question during the pendency of the trial.

The vehicle in question has been seized by the police but there is no allegation in the FIR that the same is involved in any major offence under the Act which is to be proved after trial. Moreover, learned counsel for the State has failed to point out any regulations providing that the vehicle or the liquor has to be disposed of in the manner as prescribed under Section 72- F of the Act. Thus, this Court feels no hesitation to conclude that the learned courts below have failed to exercise the jurisdiction vested in them under the law while dismissing the application to release the vehicle in question on superdari.

In view of the above, the orders dated 01.07.2020 (P-6) passed by the learned Additional Sessions Judge, Kaithal and order dated 17.06.2020 (P-4) passed by the learned Judicial Magistrate 1st Class, Kaithal, are set aside. The vehicle, i.e. Maruti Ciaz car bearing Registration No.HR-83-6003 along with liquor seized in FIR No.118 dated 19.04.2020 be released to its registered owner on the usual conditions of Superdari to the satisfaction of Chief Judicial Magistrate/Duty Magistrate, Kaithal.

The petition is allowed in the above terms.

(SANT PARKASH)
JUDGE

22.09.2021

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Whether Speaking/Reasoned: YES / NO
Whether Reportable: YES / NO