

**(228) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-37902-2021

Date of Decision:28.09.2021

Harbir

... Petitioner

Vs.

State of Haryana and others

... Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present : Mr. Bhupinder Ghai, Advocate
for the petitioner.

Mr. Manish Dadwal, A.A.G. Haryana.

VIKAS BAHL, J. (Oral)

Case is taken up for hearing through video conferencing.

The present petition has been filed under Section 482 Cr.P.C for quashing of order dated 23.08.2021 passed by Additional Session Judge, Faridabad in CRR-98 of 2021 whereby the revision petition filed by the petitioner against the order dated 12.07.2021 has been dismissed as also order dated 12.07.2021 passed by Judicial Magistrate Ist Class, Faridabad in CRM-1813-2021 whereby the application for transfer of Challan No.HR73248210617091412 dated 17.06.2021 from RTA, Faridabad to the Hon'ble Court to contest the same and for release for vehicle has been dismissed.

Learned counsel for the petitioner has submitted that order dated 12.7.2021 (Annexure P-14) has been passed by stating in paragraph-22 that it has not been prayed by the petitioner in the application that the petitioner is interested in contesting the challan in Court. The said paragraph-22 of the impugned order dated 12.7.2021 reads as under:

“22. In the present case neither any inquiry, trial is pending nor any such proceeding has been initiated. In the application

also, it is nowhere mentioned that the applicant is interest in contesting the challan in the Court. The police has clearly submitted that it has no objection in releasing the vehicle in dispute subject to payment of fine. As per section 207 M.V. Act, police or the authority concerned may release any detained vehicle. As such, the police can release the detained vehicle in dispute on payment of fine.”

Learned counsel for the petitioner has referred to the application dated 21.6.2021 (Annexure P-12) wherein it has been specifically prayed that challan may be transferred from RTA, Faridabad to the Hon'ble Court for contesting the same and vehicle be released. The relevant portion of the prayer clause of the application dated 21.06.2021 reads as under:

“It is therefore prayed that the aforesaid challan may kindly be transferred from RTA Faridabad to the Hon'ble Court for contest the same and the vehicle-Dumper 12 Tyara bearing Registration No.HR38AA-4200 may kindly be released to the applicant on superdari, in the interest of justice.”

Learned counsel for the petitioner has submitted that on account of the said error, the impugned order is perverse and that in fact the same has been passed on factual basis and thus, entire order deserves to be set aside.

It is also pointed out that Additional Sessions Judge, Faridabad, vide the impugned order dated 23.08.2021 also did not consider the said perversity and dismissed the appeal filed by the petitioner. Learned counsel for the petitioner has stated that thus, both the impugned orders be set aside and the Judicial Magistrate Ist Class, Faridabd be directed to decide the application of the petitioner dated 21.6.2021 afresh in accordance with law within a time bound period.

On the other hand, learned State counsel has opposed the present petition but however, could not dispute the factual error made by the Judicial Magistrate Ist Class.

Keeping in view the above-stated facts and circumstances as also the fact that it has been perversely recorded in the order dated 12.07.2021 that the petitioner has not mentioned in his application that he is interested in contesting the challan in Court whereas the perusal of the prayer clause would show that the petitioner had specifically mentioned the said fact. Thus, it is apparent that trial Court as well as the revisional Court fell in error while deciding the application.

Accordingly, this petition is allowed and the impugned order dated 12.7.2021 as well as order dated 23.08.2021 are set aside and the concerned Judicial Magistrate Ist Class, Faridabad, is directed to decide the application for transfer of the challan dated 21.6.2021 (Annexure P-12) as expeditiously as possible preferably within a period of four weeks from the date of receipt of a certified copy of this order.

The parties through their respective counsel are directed to appear before the concerned Court on 5.10.2021. The respective counsel are also directed to fully assist the Court and argue the matter on the date so fixed by the trial Court.

(VIKAS BAHL)
JUDGE

28.09.2021
rajeev

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No