

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-33254-2020
Date of Decision: 09.02.2021

Khazan Singh

....Petitioner

Versus

State of Haryana

...Respondent

CORAM: Hon'ble Mr.Justice Deepak Sibal

Present: Mr.Anshumaan Dalal, Advocate for the petitioner
Mr.Kirpal Singh Thakur, A.A.G. Haryana

Deepak Sibal, J.

Case taken up through video conferencing.

The present petition is directed against the order dated 22.07.2020 passed by the Judicial Magistrate First Class, Kaithal (for short the Trial Court) through which the petitioner's application filed by him seeking therein release of his confiscated Car on sapurdari has been dismissed. Also under challenge is the order dated 11.09.2020 passed by the Additional Sessions Judge, Kaithal (for short the Revisional Court) through which the petitioner's revision petition filed by him to challenge therein the aforesaid order of the Trial Court was rejected.

The facts in brief which are required to be noticed for adjudication of the present petition are that on 31.05.2020 at about 11.30 am a Swift Desire white coloured Car bearing Registration No.HR-08S-1513 after being signaled was stopped by a police party for random checking.

From the boot of the said Car illicit liquor was recovered for which the petitioner, who was the driver of the Car, as also its other occupant namely

Kulwant Singh could not produce any licence or permit. Consequently, the liquor and the Car were confiscated and the petitioner as also Kulwant Singh were prosecuted under Section 61 of the Punjab Excise Act, 1914 (for short the Act).

The petitioner being the owner of the confiscated Car filed an application before the Trial Court seeking its release on sapurdari which application of his was dismissed by the Trial Court as according to the Trial Court Section 72F of the Act constituted a bar on such release. The petitioner's revision petition filed against the aforesaid order of the Trial Court was also dismissed by the Revisional Court on the same basis occasioning the filing of the present petition before this Court.

Learned counsel for the petitioner submitted that the petitioner has been falsely implicated in the case; even otherwise no case is made out against the petitioner under Section 61 of the Act; the petitioner is the legal owner of the Car in question and therefore entitled to its release on sapurdari as no useful purpose would be served by keeping the Car in the police station; keeping the car in the police station would only result in deterioration of its condition and cause its devaluation which would be irreversible; in case the petitioner is to be acquitted in the FIR in question the condition of the Car could not be reversed; there was no bar under Section 72F of the Act for the release of the confiscated vehicle on interim basis and that under Section 81 of the Act the vehicle in question could only be confiscated after the petitioner's conviction.

In support of his case learned counsel for the petitioner relied on the following judgments:-

1. Sunderbhai Ambalal Desai versus State of Gujarat AIR 2003 SC 638

2. Gurbinder Singh @ Shinder versus State of Punjab 2018(4) R.C.R. (Criminal)
3. CRM-M-22871-2020 – Satpal versus State of Haryana decided on 08.10.2020.

Learned State counsel though opposed the present petition by submitting that Section 72F of the Act was a bar for release of the confiscated vehicle but fairly stated that the case of the petitioner was squarely covered in his favour by a judgment of this Court dated 08.20.2020 in CRM-M-22871-2020 – Satpal versus State of Haryana, which judgment had not been appealed against by the State and therefore had attained finality.

In Satpal's case (supra) this Court after considering various provisions of the Act, including Section 72F and relying on the law laid down by the Supreme Court in Sunderbhai Ambalal Desai's case (supra), held as under:-

"Counsel for the State as such could not point out any regulations the State had framed providing that the vehicle or the liquor has to be disposed in the manner as prescribed under Section 72F of the Act. It would be clear from Sections 72 and 81 that the provisions of Cr.P.C. would come into play, whereas for major offences it would not be a summary trial.

Thus, this Court is of the opinion that no useful purpose will be served as such to keep the 40 boxes of liquor stored in the police station alongwith the vehicle Mahindra KUV 100 during the pendency of the trial of the FIR. Resultantly, it can be safely held that the Courts below have failed to exercise the jurisdiction vested in them under the law while dismissing the application for release of the vehicle and liquor on Sapurdari.

Accordingly, the orders dated 16.06.2020 (Annexure P-3) and 23.07.2020 (Annexure P-5) as such are set aside by allowing the present petition and the application which has

been filed. The release be ordered in the usual terms by the Trial Court."

A perusal of the afore quoted operative portion of the judgment of this Court in Satpal's case (supra) reveals that this Court ordered the release of the confiscated vehicle on the ground that no regulations had been framed by the State as to how and in what manner a confiscated vehicle was to be disposed of in terms of Section 72F of the Act and that during the pendency of the trial no useful purpose would be served by keeping the confiscated vehicle in the police station.

In view of the above the present petition is also allowed. Resultantly, the impugned orders dated 22.07.2020 passed by the Trial Court and 11.09.2020 passed by the the Revisional Court are quashed and consequently, the vehicle in question is ordered to be released on taking of appropriate bonds/ guarantee/ security to the satisfaction of the Trial Court.

No costs.

09.02.2021
gk

(Deepak Sibal)
Judge

Whether speaking/ reasoned: Yes/No
Whether Reportable: Yes/No