

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CM-8474-CWP-2021 in/and
CWP-18556-2020
Date of Decision:-16.07.2021

Sherbaj

.....Petitioner

Versus

State of Haryana and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE VIKAS BAHL**

Present: Mr. S.S. Sahu, Advocate for the applicant/petitioner.

AJAY TEWARI, J. (Oral)

CM-8474-CWP-2021

This is an application for preponing the date of hearing fixed in the main case.

Notice of the application.

On advance notice, Ms. Shruti Jain Goyal, learned Deputy Advocate General, Haryana, accepts notice on behalf of the respondents and states that she has no objection if the application is allowed.

For the reasons recorded in the application, the same is allowed. The date of hearing in the main case is pre-poned to today itself.

CWP-18556-2020

This petition has been filed challenging the action of the respondents in seizing the vehicle of the petitioner and the order dated 27.10.2020 (Annexure P-3), whereby the Sub-Divisional Judicial Magistrate, Ratia, has declined to release the vehicle on *superdari* and further the order dated 10.08.2020 (Annexure P-4), whereby the revision petition filed by the petitioner has been rejected.

The ground of this writ petition is that Section 72-F of the Central Excise Act, 1914, which has been added on 31.03.2020 by way of amendment is unconstitutional. Before we proceed further, it would be appropriate to reproduce the said Section which is 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 precise contention of learned counsel for the petitioner is that earlier also, the State of Haryana had made similar amendment in the Punjab Excise Act, wherein Sections 79-A to 79-F were added and a Division Bench of this Court had set aside those amendments. It may be mentioned that those Sections related to confiscation of contraband and the vehicles etc. in which it was transported and had prescribed a procedure whereby confiscation could be made after giving an opportunity of hearing. It may also be mentioned that in that amendment, a power had been given to

the trying Magistrate to levy fine in lieu of ordering confiscation.

This Court in **Rajesh Kumar Vs. State of Haryana 1999 (1)**

R.C.R. (Criminal) 1, held as follows:-

“33. This survey of unamended and amended provisions of the principal Act brings out the following salient features :

(i) The power to deal with the seized property which may be subject matter of offence or which may be connected with the offence involving violation of the provisions of the Principal Act was vested in the Criminal Courts of competent jurisdiction. By virtue of the amending Ordinances, the Courts have been denuded of this jurisdiction and under Sections 79 (2) and 79-B, the executive authorities of the rank of Deputy Excise and Taxation Commissioners and Collectors have been empowered to deal with such cases and to confiscate the property.

(ii) In terms of the unamended Section 78 (2), an order of confiscation was not to be passed if the owner could prove that he had no reason to believe that an offence was being or was likely to be committed. By virtue of the impugned amendments, this provisions has also been done away with. As a matter of fact, the amended provisions do not even provide for giving of notice and opportunity of hearing to the owner of the vehicle. In other words, confiscation of the vehicle cannot be saved under the amended provisions even if the owner appears and proves that he had no knowledge that the vehicle was being or was likely to be used for commission of offence.

(iii) Under the unamended provisions, the order of confiscation could be made by the Magistrate during trial of any offence punishable under the principal Act only if he concluded that the thing was liable to confiscation. Moreover, he had the jurisdiction to give option to the owner of the thing liable to confiscation to pay appropriate fine. As against this, under Section 79(2) (amended), the power of confiscation can be exercised by the concerned authorities irrespective of the fact that prosecution for alleged commission of offence has not been initiated. That apart, the order of confiscation has been clothed with finality irrespective of the result of criminal proceedings. That means that even if the person accused of having committed offence under the Act is acquitted on the basis of a finding that the charge against him is fabricated or false or has not been proved, the order of confiscation would stand.

34. It is, thus, evident that by virtue of impugned amendments, the power of the Courts to deal with the property, which is subject matter of offence or connected with the offence involving violation of the provisions of the Principal Act has been taken away and at the same time, unbridled power has been conferred upon the executive authorities not only to seize but also to confiscate and dispose of receptacles, coverings, packages in which the intoxicants may have been found, as also the vehicles, vessels etc. used for carriage of the same. This power is exercisable even before the prosecution is initiated under the provisions of the Principal Act. Above all, an order made under Sections

79(2) and 79-B has been made final, subject only to the right of appeal under Section 79-C to the higher executive authority. The right of appeal vested in the owner of the vehicle under Section 454 of the Central Act has been extinguished. Thus, the real owner of the vehicle can be deprived of his property without being heard and without having the right to avail judicial remedy against the arbitrary exercise of power by the concerned authority under Section 79(2) or section 79-B. A bare perusal of the details incorporated in Schedule A shows that in 138 out of 299 cases, the quantity of liquor recovered is 2 bottles or less. In some cases, only a nip of liquor has been recovered from the drivers of the vehicles or passengers travelling in buses, jeeps and cars. This is sufficiently indicative of the fact that such cars, buses and jeeps were not being used for carrying liquor but for transporting human beings or goods. Ignoring this vital aspect, the concerned authorities ordered their confiscation. Therefore, we are constrained to hold that the power of seizure and confiscation has been used indiscriminately and in most injudicious manner resulting in depriving the citizens of their valuable property. Those who were travelling in the vehicles were directly prevented from use of the vehicles by virtue of seizure and confiscation. In this manner, the rights of the citizens to move freely throughout the territory of India, which is guaranteed under Article 19(1)(d) of the Constitution has been seriously impeded and restricted without any reasonable cause. Similarly, those who used the vehicles like trucks and buses for their trade, business and occupation have

*been deprived of their right guaranteed under Article 19 (1)(g) of the Constitution without any rhyme or reason. The learned Advocate General made effort to convince us that these provisions fall within the ambit of Article 19(5) and (6) and, therefore, the restriction on the fundamental rights of the petitioners must be treated as reasonable. In our view, there is no merit in his submission. Article 19 guarantees the six freedoms to the citizens of the country including the right to move freely throughout the territory of India and to practise any profession or to carry on any occupation, trade or business. These freedoms can be subjected to reasonable restrictions by Parliament and State Legislations. What is reasonable restriction ? This question has been examined by the Apex Court and other Courts in **Chintaman Rao v. State of Madhya Pradesh, AIR 1951 Supreme Court 118, M/s Dwarka Prasad Luxmi Narain v. State of Uttar Pradesh, AIR 1954 Supreme Court 224, Mohd. Hanif Quareshi v. State of Bihar, AIR 1958 Supreme Court 731, The Lord Kirshna Sugar Mills Ltd. v. Union of India, AIR 1959 Supreme Court 1124, K.K. Kochuni v. State of Madras, AIR 1960 Supreme Court 1080, Jyoti Pershad v. Administrator for the Union Territory of Delhi, AIR 1961 Supreme Court 1602, Bachan Singh v. State of Punjab, AIR 1971 Supreme Court 2164, Pathumma v. State of Kerala, AIR 1978 Supreme Court 770 and McDowell & Co.'s case (supra). The principles which emerge from the analysis of these decisions are :***

(i) That in judging the reasonableness of the restrictions imposed by clauses (2) to (6), the Court has

to bear in mind the directive principles of the State Policy.

(ii) That restrictions must not be arbitrary or of an excessive nature so as to go beyond the requirement of the interest of the general public.

(iii) That in order to judge the quality of the reasonableness no abstract or general pattern or a fixed principle can be laid down so as to be of universal application.

(iv) That a just balance has to be struck between the restriction imposed and the social control envisaged by Article 19(6).

(v) That there must be a direct and proximate nexus or a reasonable connection between the restriction imposed and the object which is sought to be achieved. In other words, the Court has to see whether by virtue of the restriction imposed on the right of the citizen the object of the statute is really fulfilled or frustrated.

(vi) That the Court must see the prevailing social values whose needs are satisfied by restrictions meant to protect social welfare.

(vii) That so far as the nature of reasonableness is concerned, it has to be viewed not only from the point of view of the citizen but the problem before legislature and the object which is sought to be achieved by the statute. This means that the Court must see whether social control envisaged is being effectuated by the restrictions imposed on the fundamental right.

35. Viewed in the light of these principles, the provisions of the principal Act authorities seizure of

the vehicle used for carrying intoxicants etc. may not be fraught with the danger of being declared unconstitutional and the same can be construed as provisions enacted in order to effectuate the purpose of legislation enacted for imposing prohibition. However, conferment of unguided power upon the executive authorities to confiscate the seized goods and vehicles even before the initiation of the prosecution, absence of the requirement of giving notice and opportunity of hearing to the owner and making the order of confiscation final irrespective of the result of prosecution and simultaneous denial of redress to the aggrieved party in a Court of law cannot be treated as reasonable restrictions within the ambit of Article 19(5) or (6) of the Constitution. Rather, these provisions not only impose unreasonable restriction on the rights of the citizens to move freely throughout the territory of the country but also to carry on their trade, business, occupation because by virtue of powers vested in the Excise Authorities and Collectors, the vehicle, whether it be a car, jeep, truck, bus, scooter, worth lakhs of rupees can be detained and even confiscated permanently in utter disregard of the principles of natural justice and the affected person is deprived of the opportunity of legal redress in a Court of law. Judicial notice can also be taken of the delay in filing charge-sheets in cases of this nature and also in the disposal of criminal cases pertaining thereto. The enormous loss the Nation will be put to by the holding up of such costly vehicles for an unauthorised transport of even negligible quantity of liquor is also a factor to be taken note of. The

unreasonableness is writ large in this piece of legislation and this one is a striking example for the saying : "Wherever the enforcement machinery is sluggish, it is sought to be covered up by plethora of legislations."

This Court ultimately directed as follows:-

“42. In the result, the writ petitions are allowed. Sections 79(2) and (4), 79-A, 79-B, 79-E and 79-E, as introduced by Haryana Ordinances No. 4 of 1997 and 1 of 1998 are struck down being violative of Articles 14 and 19 of the Constitution. The orders of confiscation and appellate orders which are under challenge in these petitions are also declared illegal and quashed with the direction to the concerned authorities to release the vehicles of the petitioners, if no already released, in favour of the registered owners on superdari with an undertaking that the vehicle in question shall be produced as and when required by the authorities and shall not be disposed of till the final decision of the matter.

43. As a consequence of this, the competent Criminal Courts shall now be free to exercise power under Chapter XXXIV of the Code of Criminal Procedure and decide applications pending before them or which may to filed in future for release of vehicle seized on the allegation of commission of offences under the principal Act.”

The precise contention of learned counsel is that as per the present amended Section, a similar blanket power has been conferred for

seizing the vehicle and a bar has been imposed on the release.

In our considered opinion, the reasons which weighed with to this Court set aside the earlier amendments would apply with equal force to the present amendment and, consequently, the same is declared *ultra vires*.

Resultantly, the petition is allowed to that extent and the matter is now remanded back to the Sub-Divisional Judicial Magistrate, Ratia, to pass a fresh order, in accordance with law.

**(AJAY TEWARI)
JUDGE**

**(VIKAS BAHL)
JUDGE**

July 16, 2021.
sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.