

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr. No.259

CRM-M-7294-2021
Date of Decision: 20.4.2022

Sameer Bararia

....Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE SANT PARKASH

Present: Mr. SS Khurana, Advocate for the petitioner.

Mr. Gaurav Bansal, AAG, Haryana

SANT PARKASH, J

Knocking the door of this Court by filing the present petition under Section 482 Cr.P.C., the petitioner prays for setting aside the impugned order dated 17.12.2020 (P-4) passed by learned Additional Sessions Judge, Jhajjar, affirming the order 14.10.2020 (P-2), vide which, learned Judicial Magistrate 1st Class, Jhajjar dismissed the application of the petitioner for releasing the vehicle, i.e. Fiat Car bearing registration No.HR-26-CV-3022 on superdari.

The brief facts of the case are that on 14.8.2020 the vehicle in question, which was being driven by Satyawan, was intercepted by the police party at village Neemli, Police Station Sahlaas, District Jhajjar, from which 24 bottles of country made liquor make 'Santra' were recovered without any permit or licence. The said liquor was taken into possession as per the procedure prescribed under Punjab Excise Act, 1914 (for short 'the Act'). The driver/accused was prosecuted under Section 61 of the Act and the vehicle was confiscated. The vehicle in question is registered in the

name of Magneti Marelli Powertrain India Pvt. Limited. The petitioner, being the power of attorney holder, moved an application for release of the said vehicle on superdari. The same was, however, dismissed by the learned Judicial Magistrate 1st Class, Jhajjar, vide impugned order dated 14.10.2020 (P-2) on the ground that Section 72F of the Act constituted a bar on such release.

Aggrieved against the said order, the petitioner filed a revision petition, which was also dismissed by the learned Additional Sessions Judge, Jhajjar vide impugned order dated 17.12.2020 (P-4).

Hence the present petition.

Learned counsel for the petitioner submits that the vehicle in question is parked idle in the Police Station and if not used, will be converted to junk. He further submits that the petitioner being the registered owner/Power of Attorney Holder on behalf of the Company, is entitled to release the vehicle on superdari. He next submits that in case the accused/driver is to be acquitted in the FIR in question, the condition of the car would not be reversed. He also submits that 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 conviction of the accused. He placed reliance on a judgment of the Hon'ble Supreme Court in **Sunderbhai Ambalal Desai Vs. State of Gujarat, AIR 2003 SC 638**, Division Bench judgment of this Court rendered in **Gurbinder Singh @ Shinder Vs State of Punjab, 2016 (4) RCR (Crl.) 492** as also a judgment of this Court passed in **CRM-M-22871-2020 (Satpal vs. State of Haryana)**, decided on 08.10.2020.

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. He though opposed the present petition by submitting that Section 72F of the Act envisages a bar for release of the confiscated vehicle but fairly stated that the case of the petitioner was squarely covered in his favour by judgment of this Court rendered in **Satpal's** case (supra).

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

At the outset, it is apt to reproduce Section 72F of the Act, which reads as under:-

“72F.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.”

Similar controversy has been dealt by this Court in **Satpal's** case (supra) after relying on the law laid down by the Hon'ble Supreme Court in **Sunderbhai Ambalal Desai's** case (supra). The relevant observations made therein read 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."

From the perusal of the above-said observations, this Court is of the view that no useful purpose will be served to keep the vehicle in question in the Police Station during the pendency of the trial of the FIR. Further, learned counsel for the State could not point out any regulations, which 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.

In view of the above the present petition is allowed. Resultantly, the impugned order dated 14.10.2020 passed by the learned Judicial Magistrate 1st Class, Jhajjar and order dated 17.12.2020 passed by the learned Revisional Court are quashed. Consequently, the vehicle in question is ordered to be released to the petitioner on the usual conditions of superdari to the satisfaction of learned trial court.

20.4.2022
mks

(SANT PARKASH)
JUDGE

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