

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr. No.270

CRM-M-9634-2021(O&M)
Date of decision: 19.07.2022

KASAM

....Petitioner

Versus

STATE OF HARYANA

....Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: Ms. Rosi, Advocate for
Mr. M.D. Khan, Advocate
for the petitioner.

Mr. Ashish Yadav, Addl. AG, Haryana.

* * *

VINOD S. BHARDWAJ, J. (Oral)

The instant petition has been filed under Section 482 of the Code of Criminal Procedure with a prayer for setting aside the order dated 18.10.2019, passed by the Judicial Magistrate First Class, Mobile Court, Pinagwan (Annexure P-2) and order dated 02.12.2019 (Annexure P-3) passed by the learned Session Judge, Mewat, whereby application for releasing the vehicle bearing No.HR-74-B-4439 was dismissed and subsequently the revision petition was also dismissed.

Learned counsel for the petitioner contends that the application submitted by the petitioner for seeking release of the vehicle was dismissed by the Courts below solely for the reason that the proceedings for determination as to whether the vehicle in question has to be confiscated or not, have not been decided by the Sub Judicial Magistrate who is the

competent authority in terms of Section 2(d) of the Haryana Gauvansh Sanrakshan and Gausamvardhan Act, 2015. Furthermore, while deciding the revision petition so filed by the petitioner against the said order passed by the Judicial Magistrate First Class, the Sessions Judge has also failed to refer to the mandate of Section 17 of the Haryana Gauvansh Sanrakshan and Gausamvardhan Act, 2015. She contends that in the absence of any order of confiscation, the petitioner could not be denied the release of the said vehicle which is owned by the petitioner.

Section 17 of the Haryana Gauvansh Sanrakshan and Gausamvardhan Act, 2015 (hereinafter referred to as 'the Act of 2015') is reproduced hereinafter:-

“(1) Whenever an offence punishable under this Act has been committed, any vehicle used in the commission of such offence shall be liable to be confiscated by a police officer not below the rank of Sub-Inspector or any person authorized in this behalf by the Government.

(2) Where any vehicle referred to in sub-section (1) is confiscated in connection with the commission of any offence punishable under this Act, a report about the same, without unreasonable delay be made by the person seizing it to the competent authority and whether or not a prosecution is instituted for commission of such offence, the competent authority, having jurisdiction over the area where the said vehicle was confiscated, may, if satisfied that the said vehicle was used for commission of offence under this Act, order confiscation of the said vehicle:

Provided that before ordering confiscation of the said vehicle, a reasonable opportunity of being heard shall be afforded to the owner of the said vehicle.

(3) Whenever any vehicle as referred to in sub-section (1) is confiscated in connection with commission of an offence under this Act then notwithstanding anything contained in any other law for the time being in force, no Court, Tribunal or other authority, except the competent authority, shall have jurisdiction to make order with regard to the possession, delivery, disposal, release of such vehicle.

(4) Where the competent authority is of the opinion that it is expedient in public interest that the vehicle, as referred to in sub-section (1), confiscated

for commission of offence under this Act be sold by public auction, he may at any time direct it to be sold: Provided that before giving such directions for sale of confiscated vehicle, a reasonable opportunity of being heard shall be afforded to the owner of the said vehicle.

(5) Any person aggrieved by an order made by the competent authority under sub section (2) or sub-section (4) may, within a period of thirty days from the date of such order prefer an appeal to the Deputy Commissioner of the district concerned.

6) Any order of confiscation made by the competent authority shall not prevent the infliction of any punishment to which the person affected thereby is liable under this Act.”

The aforesaid Act empowers the Police Authorities to seize a vehicle used in the commission of the crime and further empowers the Sub Judicial Magistrate to pass an appropriate order, directing confiscation of a vehicle after granting a reasonable opportunity to the owner of the said vehicle to be heard on the same. Such power vested in the Magistrate has to be exercised within a reasonable time. In the event no such order authorizing confiscation of the vehicle alleged to have been used in the commission of the crime under the said Act is passed, the same cannot be a valid basis for continued seizure of the vehicle.

Learned counsel has also made a reference to the order dated 14.11.2017 passed by a Co-ordinate Bench of this Court in the case titled “*Mohamad Salman Vs. State of Haryana*” decided on 14.11.2017. The relevant extract thereof reads as under:-

“Counsel for the petitioner has relied upon an order dated 08.08.2017 passed in CRM M - 28724-2017 (Harpal Singh Vs. of State observations Haryana), where the following have the "Learned counsel for been made: petitioner contends that Amendment of Haryana Gausamvardhan Act , Gauvansh Sanrakshan and " the Act "), (hereinafter referred to as 2015 Co similar case , a is and in process in an order the this Court by of ordinate Bench dated 16.01.2017 passed in CRM No. M-

37389 of State of Haryana "had 2016 titled as "Isran v. vehicle of the release of also directed the petitioner therein subject to the satisfaction of trial Court. In support of his submissions, he has also placed reliance upon the judgment of Division Bench of this Court in the case of "Mainpal v. State of Haryana and others" CWP No.19153 of 2016 decided on 30.05.2017.

Learned State counsel does not the submissions made by learned counsel for the petitioner and states that the amendment of the Act is under process. Consequently, the petition is allowed and the contested orders dated 06.03.2017 (Annexure P-4) and 21.04.2017. Annexure P-6) are set-aside. The vehicle i.e. truck bearing registration No. HR99YV (T) 1534 shall be released on superdari subject to the satisfaction of trial Court / Duty Magistrate ." Similar order has been passed in CRM - M - 3881 Similar order has been passed 2017 (Kulwinder Singh Vs. State of Haryana) .. in which order the dated 31.05.2017 , vehicle was ordered to be released and in CRM M - 37389- 2016 Haryana) State of vs. vide order dated 16.01.2016, vehicle had been to be released on superdari. Learned ordered State counsel has not disputed the abovesaid factual position. In view of submissions made by counsel this petition is allowed and the petitioner, passed 14.06.2017 by impugned order dated Fatehabad, Additional Sessions Judge, dismissing the application of the petitioner for releasing the vehicle bearing registration of the petitioner No.DL-1M2968 favor in aside, set The canter registered owner, is shall be released on superdari subject to the Court / Duty satisfaction the aforesaid for the Magistrate."

Additionally reference is made to another judgment passed in the matter "***Mubin Vs. State of Haryana***" in CRM-M-39734 of 2019 decided on 18.09.2019.

In view of the statutory provision contained in Section 17 of the Act of 2015 and in the absence of any order of confiscation passed by the

competent authority read with the judgment passed by this Court, I deem it appropriate to allow the instant petition. The impugned order dated 18.10.2019 declining the release of the vehicle in favour of the petitioner by the JMIC, Mobile Court, Pinagwan and order dated 02.12.2019 passed by the Sessions Judge, Mewat are set aside. The vehicle bearing No.HR-74-B-4439 is directed to be released in favour of the registered owner, subject to furnishing an undertaking that as to when an order directing confiscation of the vehicle is passed by the competent authority, the same shall be duly handed over and upon compliance of such necessary conditions as may be so imposed by the competent Court.

19.07.2022
Amandeep

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No