

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

CRM-M-21732-2014 (O&M)
Date of Decision:- 8.9.2022

Gurmeet Kaur ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. P.P.S. Duggall, Advocate for the petitioner.

Mr. Luvinder Sofat, AAG, Punjab

GURVINDER SINGH GILL, J.

1. The petitioner Gurmeet Kaur, wife of deceased/accused Angrez Singh, assails order dated 28.2.2014 vide which an application moved by her seeking release of truck bearing Registration No. RJ-13GA-0390 on *superdari* has been dismissed.
2. A few facts necessary to notice for disposal of this petition are that FIR No. 200 dated 26.9.2005 under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short hereinafter referred to as '*the Act*'), Police Station Dharamkot, District Moga was lodged against three accused namely Hakam Singh, Kuldeep Singh and Angrez Singh wherein allegations were broadly to the effect that on 26.9.2005 during the course of *nakabandi* in the area of village Lohgarh, a truck bearing Registration No. RJ-13GA-0390 was signalled to stop. As the truck stopped, one person jumped out of the same from the passenger side and ran away. However,

two other persons were apprehended. The person driving the truck disclosed his name as Hakam Singh. The other disclosed his name as Kuldeep Singh. They further disclosed that the person who had run away from the spot was Angrez Singh. Angrez Singh could not be arrested and was declared a proclaimed offender. The remaining two namely Hakam Singh and Kuldeep Singh were tried by the Special Court, Moga and both the accused were found guilty and were convicted vide judgment dated 18.7.2007. The said two accused challenged the judgment dated 18.7.2007 by way of filing Criminal Appeals i.e. CRA-D-791-DB-2007 and CRA-D-929-DB-2007 in this Court. Both the said appeals were allowed by this Court vide judgment dated 10.12.2012 (Annexure P-4). The operative portion of the said judgment is reproduced hereinunder :-

“ In these circumstances, it must, follow that the learned trial Court wrongly convicted and sentenced the appellants vide impugned judgment of conviction and order of sentence, which must be set aside.

Resultantly, both the appeals succeed and are hereby allowed; **impugned judgment of conviction and order of sentence are set aside** and the appellants are acquitted of the charge framed against them, by according them benefit of doubt.”

3. This Court while acquitting the aforesaid two accused held that Angrez Singh, who had escaped from the spot, was owner of the truck bearing Registration No. RJ-13GA-0390 and that the two other persons sitting in the truck i.e. Hakam Singh and Kuldeep Singh could not be attributed conscious possession of the bags loaded in the truck and as such, could not be held guilty. It is not in dispute that the aforesaid judgment of acquittal dated 10.12.2012 (Annexure P-4) has since attained finality.

4. Angrez Singh, who had earlier been declared a proclaimed offender admittedly expired on 21st August, 2021, as has also been specifically admitted in the reply filed by the State. His wife i.e. the petitioner Gurmeet Kaur moved an application for release of the truck on *superdari* but the same was declined vide impugned order dated 28.2.2014 (Annexure P-5).
5. The learned counsel for the petitioner has submitted that since the co-accused have been acquitted by this Court, it cannot be said that the vehicle in question was ever used for commission of any offence and, therefore, the vehicle in question ought to have been released to the petitioner, particularly when the third co-accused Angrez Singh has already expired and there is no question of his being tried. It has been submitted that in these circumstances, the proceedings initiated by the trial Court under Sections 60(3) and 63 of the Act, as evident from the impugned order, deserve to be set aside and the same cannot continue for want of any finding as regards the use of vehicle in commission of any offence under the Narcotic Drugs and Psychotropic Substances Act, 1985.
6. On the other hand, the learned State counsel has vehemently argued that the trial Court in its judgment dated 18.7.2007 (Annexure P-3), while holding the accused Hakam Singh and Kuldeep Singh guilty, had specifically directed that the vehicle be confiscated. It has further been submitted that though the conviction of the said accused has been set aside by this Court vide judgment dated 10.12.2012 (Annexure P-4), but it is solely on account of the fact that while Angrez Singh was found to be owner of the truck in question who had run away from the spot, there was no evidence to establish the conscious possession of the other two accused as regards the contraband

being carried in the truck in question. The learned State counsel has submitted that there is no categorical finding in the judgment dated 28.2.2014 (Annexure P-5) that no contraband was being carried in the truck in question and that as such, in terms of Section 63 of the Act, even if the accused had been acquitted, it is for the Court to decide as to whether any article or thing seized under the Act is liable to be confiscated under Sections 60, 61 or 62 of the Act and thus, the acquittal of the accused Hakam Singh and Kuldeep Singh is of no consequence qua the confiscation of the truck in question.

7. This Court has considered rival submissions addressed before this Court.
8. The FIR in question was lodged against the petitioner's husband Angrez Singh as well as Hakam Singh and Kuldeep Singh with the allegation that six bags of poppy husk, each weighing 35 kilograms were recovered from the truck in which they were travelling. While the petitioner's husband Angrez Singh ran away from the spot and was later declared a proclaimed offender, the other two accused namely Hakam Singh and Kuldeep Singh were arrested at the spot. Both were tried by the Special Court, Moga and were held guilty vide judgment dated 18.7.2007 (Annexure P-3). The concluding paragraph of the said judgment reads as follows :-

“Therefore, keeping in view the evidence on record, it is duly established that six bags of poppy straw were recovered from truck RJ-13GA-0390 which was apprehended on 26.9.2005 at night time, which was driven by Hakam Singh accused and Kuldeep Singh was sitting beside him. The recovery of contraband from their possession is duly proved on file. Therefore, I hold both the accused guilty under the provisions of Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 & convict them thereunder. The

truck used in this occurrence is owned by Angrez Singh, the other accused, who is proclaimed offender in this case. **The ownership of truck in the name of Angrez Singh son of Darshan Singh is duly proved on record. The vehicle was used for carrying contraband falling in commercial quantity. Therefore, the vehicle is also ordered to be confiscated.** Let both Hakam Singh and Kuldeep Singh convicts be heard on the quantum of sentence.”

9. The aforesaid judgment of conviction dated 18.7.2007 (Annexure P-3) was, however, set aside by this High Court in appeal vide judgment dated 10.12.2012 (Annexure P-4) mainly on the ground that Hakam Singh and Kuldeep Singh, who were not the owner of the truck in question could not be attributed conscious possession of the contraband, being carried in the truck. It was further held that it was Angrez Singh who had run away from the spot, who was owner of the truck in question.
10. This Court vide judgment dated 10.12.2012 (Annexure P-4), having set aside the trial Court’s judgment dated 18.7.2007 (Annexure P-3) in toto, the direction issued by the trial Court for confiscation of the vehicle in its judgment dated 18.7.2007 (Annexure P-3) also would not survive. Further, this Court also is of the opinion that such like direction for confiscation of vehicle could not have been issued straight away by the trial Court without issuing notice to owner of the truck as owner of the truck had not been tried by the trial Court.
11. Section 63 of the Act mandates the trial Court, despite acquittal of the accused, to inquire into the matter as to whether any article or thing seized under the Act is liable for confiscation or not. Section 63 of the Act for the sake of ready reference is reproduced hereinunder :-

“63. Procedure in making confiscations.□

- (1) In the trial of offences under this Act, whether the accused is convicted or acquitted or discharged, the court shall decide whether any article or thing seized under this Act is liable to confiscation under section 60 or section 61 or section 62 and, if it decides that the article is so liable, it may order confiscation accordingly.
- (2) Where any article or thing seized under this Act appears to be liable to confiscation under section 60 or section 61 or section 62, but the person who committed the offence in connection therewith is not known or cannot be found, the court may inquire into and decide such liability, and may order confiscation accordingly: Provided that no order of confiscation of an article or thing shall be made until the expiry of one month from the date of seizure, or without hearing any person who may claim any right thereto and the evidence, if any, which he produces in respect of his claim: Provided further that if any such article or thing, other than a narcotic drug, psychotropic substance, controlled substance, the opium poppy, coca plant or cannabis plant is liable to speedy and natural decay, or if the court is of opinion that its sale would be for the benefit of its owner, it may at any time direct it to be sold; and the provisions of this sub-section shall, as nearly as may be practicable, apply to the net proceeds of the sale.”

12. A perusal of the impugned order tends to show that the trial Court has initiated proceedings under Sections 60(3) and 63 of the Act. The impugned order is reproduced hereinunder :-

“1. Applicant Gurmeet Kaur wife of late Angrej Singh, resident of village Allewala, District Ferozepur has filed present application for release of truck No.RJ-13GA-0390 in case FIR No.200 dated 26.09.2005, under Section 15 of Narcotic Drugs and Psychotropic Substances Act, 1985, registered with P.S Dharamkot, District Moga, on the ground that judgment dated 18.07.2007 passed in Sessions Case No.43 dated 02.03.2006 has been set aside by Hon'ble High Court and she being widow of Angrej Singh, original owner of the truck is entitled to its release.

2. Notice under Section 60(3) and 63 of Narcotic Drugs and Psychotropic Substances Act, was served upon applicant Gurmeet Kaur and she has appeared as AW1 in support of her case.
 3. I have heard learned counsel for applicant, learned Additional Public Prosecutor for State and with their assistance have gone through record of this case.
 4. Perusal of copy of judgment placed on record shows that ASI Palwinder Singh of P.S. Dharamkot on 26.09.2005, had intercepted truck No.RJ-13GA-0390, in the area of village Lohgarh, at about 2.30 A.M. When truck was stopped on signal by the police one person from conductor side had run away, but two persons were nabbed, who had disclosed their name as Hakam Singh and Kuldeep Singh, respectively. Person who had run away was Angrej Singh son of Darshan Singh, resident of village Aale Wala, P.S. Sadar Ferozepur predecessor-in-interest of applicant and registered owner of the truck in question. He could not be apprehended and had to be declared proclaimed offender. In such, eventuality if conviction of Hakam Singh and Kuldeep Singh has been set aside it does not mean that truck in question was not involved in transportation of poppy husk, weighing 210 kg. **Property of proclaimed offender cannot be released, rather, it has to be attached and sold as per law. Truck in question was already confiscated by Smt. Amarjot Bhatti, the then Special Judge, Moga and that part of judgment is not set aside by Hon'ble High Court.** Hence application in hand is dismissed, because truck in question has already been confiscated to State.”
13. This Court finds that while the trial Court, in terms of Section 63 of the Act would be fully competent to inquire into the matter as to whether the truck in question is liable to be seized or not, but the observation of the Court to the effect that the vehicle is liable to be seized as Angrez Singh had been declared a proclaimed offender and that property of the proclaimed offender cannot be released is rather misconceived inasmuch as the truck in question had not been seized with the aid of Section 83 Cr.P.C. but had been seized, being a case property in FIR No. 200 dated 26.9.2005, Police Station Dharamkot, District Moga.

14. Similarly, the observation of the Court that the truck in question had already been confiscated to State pursuant to order dated 28.2.2014 passed by Judge, Special Court, Moga (Annexure P-5) is also erroneous inasmuch as the said judgment has been set aside in toto by this Court vide judgment dated 10.12.2012 (Annexure P-4).
15. The condition of vehicle in question is liable to deteriorate further on account of its continuous disuse and vagaries of weather. Since the question as regards the confiscation of vehicle is yet to be finally decided, the petitioner, being the wife of late Angrez Singh, who was the registered owner of the truck in question, is entitled to possession of the said vehicle during the pendency of the confiscation proceedings. As such, the impugned order is hereby set aside and it is ordered that the truck bearing Registration No. RJ-13GA-0390 be released on *superdari* to the petitioner Gurmeet Kaur subject to imposition of any such conditions, as may be deemed appropriate by the trial Court during the continuance of proceedings under Sections 60(3) and 63 of the Act, subject to her furnishing requisite undertakings/sureties.
16. It is further made clear that though para 2 of the impugned order dated 28.2.2014 (Annexure P-5) does suggest that proceedings under Sections 60(3) and 63 of the Act had been initiated but in case for any reason, the same had not been initiated or are not continuing, the same be initiated/continued and proceedings in respect of the same be concluded at the earliest, as the matter relates to an offence which had taken place about 17 years back. It would be expected that the said proceedings are concluded

within 6 months from today unless there are some compelling reasons for not being able to conclude the same.

8.9.2022

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned
Whether Reportable

Yes / No
Yes / No