IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M No. 14610 of 2022 (O&M)
Date of Decision: 09.05.2022

Prem Kumar

.... Petitioner

Versus

State of Punjab

.... Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Hitesh Verma, Advocate for the petitioner.

Mr. Bhupender Beniwal, Assistant Advocate General, Punjab

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SURESHWAR THAKUR, J. (ORAL)

CRM-12978-2022

1. The application is allowed, as prayed for.

2. Exemption from filing the certified / original / legible / true typed copies of the annexures is granted, subject to all just exceptions.

MAIN CASE

1. An FIR No. 173 of 27.12.2020, became registered at Police Station Dhanaula, District Barnala, constituting therein offences embodied under Sections 61, 78 (2) of the Punjab Excise Act, 1914.

2. Subsequent to registration of the afore FIR, at the police station (supra), the incriminatory vehicle, allegedly therein carrying illicit liquor, became impounded. The impounded vehicle bears Regn. No. HR-26AT-5682, and, is of Verna Car Model.

3. However, the registered owner of the vehicle concerned, proceeded to cast an application under Section 452 of the Cr.P.C., read with Section 78(2) of the Punjab Excise Act, 1914, more specifically, under the Third Proviso thereof, seeking therethrough the release of the impounded

vehicle. The relevant Third Proviso, as carried in the afore statutory provisions becomes extracted hereinafter:-

> *" Provided further that during pendency of trial, conveyance shall only be released on submission of security (in form of cash security of bank guarantee) equivalent to the value of the conveyance thereof."*

4. The learned Magistrate concerned, through an order made on 04.02.2021 (Annexure P-2), ordered for release of the impounded vehicle, but made its release conditional, through his making the hereinafter extracted imperative conditions, upon the registered owner of the seized vehicle.

> *" Xxxx*
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> *The applicant Prem Kumar is ordered to furnish bank guarantee to the tune of Rs. 4,50,000/- or deposit cash value of Rs. 4,50,000/- and subject to condition that the applicant shall not alienate the same without prior permission of the Court and will be liable to produce the same in the Court on each and every date of hearing and not to change its colour and condition till final disposal of the main case. Bank guarantee to the tune of Rs, 4,50,000/- or cash value of Rs. 4,50,000/- not deposited by the applicant."*

5. The aggrieved registered owner became obviously pained from the above condition, as, became imposed in the order, as, made by the learned ACJ(SD), Barnala, inasmuch as, rather by the learned ACJ(SD) concerned, making a direction upon the registered owner of the vehicle, to furnish a bank guarantee in the sum of Rs. 4.50 lakh of a nationalized bank. The sequel to the afore purported untenable condition being imposed by the learned ACJ(SD) concerned, through the order, made by him, on 04.02.2021, is that, a revision petition bearing CRR-08-2021, became

constituted thereagainst, before the learned Sessions Judge, Barnala. The Revisional Court, through an order made upon the revision petition (supra), hence on 16.03.2022 (Annexure P-4), while affirming the order (supra), as, initially made by the learned ACJ(SD) concerned, rather dismissed the revision petition.

6. The petitioner becomes obviously aggrieved, and, has chosen to assail the order of 16.03.2022 (Annexure P-3), as, made by the learned Revisional Court, through his hence instituting the extant petition, cast under Section 482 of the Cr.P.C.

7. As above stated, this Court is enjoined to make a valid interpretation of the Third Proviso, existing in the relevant statutory provisions (supra), conspicuously of the coinage therein i.e. "equivalent to the value of the conveyance thereof". Both the learned Courts below, did not conspicuously, make any interpretation qua the afore statutory coinage nor obviously they meted any valid connotation thereto, whereas, only upon the meteings of valid significations thereto, by the learned Magistrate concerned, in his initially drawn order, and thereafter in the impugned order, as, made by the learned Revisional Court concerned, rather would constrain this Court to assign any validity to the orders concerned.

8. Be that as it may, this Court is of the view, that it appears, that both the leaned Courts, became guided by the value of the vehicle, carried in the registration certificate, as, became issued with respect to the impounded / seized vehicle, rather in the year 2008. If so, the afore value of the vehicle at the afore stage, was not the relevant value, for the drawing of any inference, that hence in commensuration thereof, a valid direction being

made upon the owner of the registered vehicle to furnish bank guarantees, drawn from any nationalized bank.

9. The valid connotation thereof, is that the value of the seized / impounded vehicle, at the stage of either its seizure, and more importantly, at the stage of the preferment of the application, rather became the relevant stage or era, for becoming borne in mind by both the learned Courts below, in determining the value of the seized conveyance, and, hence for thereafters both making a valid injunction upon the registered owner concerned, to furnish in commensuration thereof, bank guarantee(s) drawn from any nationalized banks. The reason for the making of the afore signification to the above, becomes spurred from the fact, that unless the afore interpretation is meted thereto, thereupon, alone the salutary purpose behind the afore provision, would be carried ahead, and, would also bear commensuration with the depreciations which have occurred since the purchase of the vehicle, and, upto the stage of its becoming impounded. The apposite depreciation which has occurred, since the date of purchase, and, upto the apposite application, being preferred before learned Court concerned, is to be borne in mind, as it becomes the actual saleable price of the vehicle concerned, and, obviously becomes the relevant parameter, for making a lawful insistence upon the owner concerned, to furnish in commensuration thereof, any bank guarantee or cash security.

10. However, though both the learned Courts below, without the afore relevant parameter, being borne in mind, proceeded to make the afore orders upon the aggrieved registered owner. It appears that the afore order was made, as the aggrieved owner neither pleaded nor made any arguments

in respect thereof, before the learned Courts below. The effect of neither any pleadings in respect of above, being made, and, also no arguments being addressed, in respect thereof, is that, without the above and without any tangible evidence existing on record qua the above, this Court becoming constrained to not make the apposite determinations. Therefore, after setting aside the impugned orders, this Court is constrained to make an order of remand, upon the learned Judicial Magistrate concerned, to, after receiving evidence qua the depreciated value of the vehicle concerned, hence in contemporaneity with the preferment of the apposite application, to proceed to draw a conclusion, with respect to the value of the vehicle at the time of the preferment of the application concerned, and thereafter proceed to, after hearing all concerned, hence make an order imposing a condition, upon the registered owner concerned, to, furnish in commensuration to its apposite depreciated value, either cash security or a bank guarantee drawn from any nationalized bank(s).

11. Disposed of.

May 09, 2022 **(SURESHWAR THAKUR)**
'dk kamra' **JUDGE**

Whether Speaking/reasoned	*Yes / No*
Whether Reportable	*Yes / No*