

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

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**CRM-M-24902-2018 (O &M)
Date of decision: 02.02.2022**

RAJID KHAN

.....Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

.....Respondents

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

Present:- Mr. Satbir Singh Gill, Advocate for the petitioner.

Mr. Kanwar Sanjiv Kumar, AAG, Haryana.

VINOD S. BHARDWAJ, J. (Oral)

This case has been taken up through Video Conferencing via Webex facility in the light of Pandemic Covid-19 situation and as per instructions.

Prayer in the instant petition is for setting aside the order dated 09.02.2018 passed by the Sub Divisional Magistrate, Kalawali, District Sirsa whereby the application of the petitioner for releasing the vehicle/truck bearing registration No. HR-38Q-4721 on Superdari has been dismissed. A further prayer is sought for seeking release of the said vehicle on superdari during the pendency of trial in FIR No. 56 dated 03.06.2016 registered under Sections 3, 5, 13 and 17 of the Haryana Gauvansh Sanrakshan and Gausamvardhan Act, 2015 and Prevention of Cruelty to Animal Act, 1960 at Police Station Odhan, District Sirsa.

2. Reply to the petition already stands filed by way of affidavit of Kishori Lal, HPS, Deputy Superintendent of Police, Dabwali.

3. I have gone through the petition and the documents appended

along with same with the assistance of the counsel representing the respective parties.

4. A perusal of the facts would show that a secret information was received by the Investigating Agency about cows being loaded in a truck and to be taken for slaughtering. When the raiding party reached at GT road Paniwala Mota near Engineering College on the Government vehicle, the truck bearing HR-38Q-4721 was found parked there and no other person was present. A total number of 26 cattle were loaded in the truck. The truck was seized by the authority or the same was deployed for an illegal activity under the Act of 2015.

5. The petitioner moved an application to the Sub Divisional Magistrate, Kalawali for release of the vehicle on Superdari on 10.10.2017 (Annexure P-5). However, the same was dismissed vide order dated 09.02.2018 (Annexure P-6).

6. Learned counsel appearing on behalf of the petitioner has assailed the order passed by the Sub Divisional Magistrate, Kalawali on the ground that the same is non-speaking and has not been passed in accordance with the statutory provisions. It is further submitted that the petitioner is in the business of Transporter and that the vehicle of the petitioner was seized by the Police under the provisions of the Haryana Gauvansh Sanrakshan and Gausamvardhan Act, 2015. The petitioner is not an accused in the said FIR and has no role in the commission of the offence. He is the registered owner of the vehicle and that the same is lying in an unattended condition at the Police Station. Reliance is placed on judgment passed in the matter of *Sahid Ahmad versus State of Haryana* in Criminal Miscellaneous No. 12420 of 2016 dated

04.02.2020.

7. The petition was opposed by the learned State counsel on the ground that the application for release of the vehicle on superdari has been rightly rejected by the Sub Divisional Magistrate, Kalawali. It is further stated that one accused Mohammad Hasan son of Rahis Khan was arrested in the case and there are two other accused persons namely Ilias son of Akhlaf and Javed son of Sarif Chaudhary had been declared as Proclaimed Offenders. It is further stated that even accused Mohammad Hasan has thereafter absconded and was declared as Proclaimed Offender vide order dated 01.09.2018. It is, however, not controverted by the learned State counsel that the petitioner is not an accused in the said case and was never charge-sheeted.

8. Before proceeding further, it would be relevant to advert to the statutory provision. Section-17 of the Haryana Gauvansh Sanrakshan and Gausamvardhan Act, 2015 deals with confiscation of the vehicles. The relevant statutory provision is extracted as under :-

*“17. **Confiscation of vehicles.**-(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 [seized] by a police officer not below the rank of Sub-Inspector or any person authorized in this behalf by the Government.*

(2) Whether any vehicle referred to in sub-section (1) is seized in connection with the commission of any offence punishable under this Act, a report about the same, without unreasonable delay, shall 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 seized, 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 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.”

9. A perusal of the said provision shows that the statute has used two different expressions. Section 17(1) uses the word ‘Seizure’ while Section 17(2) and subsequent Sub Sections use the word ‘Confiscate’. A perusal of the said provisions shows that the competent authority is required to pass an order directing confiscation of a seized vehicle after granting of an opportunity of hearing to the owner of the said vehicle. The statute mandates the competent authority to pass such an order without unreasonable delay.

10. A perusal of the statement filed on behalf of the respondent-State fails to show that any order directing confiscation of the vehicle has been passed by the competent authority. The vehicle in question was seized in the year 2016 and already a substantial period has elapsed without an order of confiscation having been passed in terms of Section 17(2) of the Haryana Gauvansh Sanrakshan and Gausamvardhan Act, 2015. It cannot thus be assumed that there is any satisfaction accorded by the competent authority about the use of the vehicle in commission of the offence. Learned counsel appearing on behalf of the State has also failed to refer to any order of confiscation of the said vehicle.

11. Hence, in the absence of confiscation of the vehicle in terms of Section 17(2) of the Haryana Gauvansh Sanrakshan and Gausamvardhan Act, 2015, the vehicle in question remains a seized property and its continuing retention by the Police without any valid order of confiscation is unwarranted. The impugned order merely deals with an application seeking release of the vehicle on superdari and the same has been summarily dismissed without assigning any reason and

without noticing the provisions contained in Section 17 of the Haryana Gauvansh Sanrakshan and Gausamvardhan Act, 2015 and is thus liable to be set aside.

12. In view of the discussion as above, the order dated 09.02.2018 (Annexure P-6) is set aside and the seized vehicle bearing registration No. HR-38Q-4721 is directed to be released in name of the registered owner on Superdari subject to such conditions as may be so prescribed by the competent authority in accordance with law.

The Criminal Miscellaneous petition is allowed.

(VINOD S. BHARDWAJ)
JUDGE

FEBRUARY 02, 2022

Vishal sharma

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