

CRM-M-53525-2021

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

(217)

CRM-M-53525-2021 (O&M)
Date of Decision:-01.02.2022.

Raju

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Sanyam Malhotra, Advocate for the petitioner.

Mr. Bhupender Beniwal, AAG, Punjab.

(Through Video Conferencing)

SURESHWAR THAKUR, J. (Oral)

1. Tata Indigo Car bearing registration No.CH-01-AH-6240 is alleged to be carrying illicit liquor. Consequently, the driver of the above vehicle is charged for commission of an offence, under, Section 78 of the Punjab Excise Act, 1914.

2. However, during the pendency of the trial against the driver of the offending/seized vehicle, an application became moved before the learned Magistrate concerned, by the owner of the above vehicle. Through the above application, the registered owner of the vehicle claimed relief, for release on superdari to him of the offending/confiscated vehicle, wherein, illicit liquor was allegedly illegally transported. The learned Judicial Magistrate concerned, through an order of 15.03.2021 (Annexure P-2), directed for release of the vehicle to the applicant one Raju. However, the order supra was made subject to his depositing cash amount of

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Rs.3,00,000/- in the Treasury of the Court.

3. The aggrieved preferred a Criminal Revision petition bearing No.29 of 18.08.2021, before the learned Additional Sessions Judge, SAS Nagar, (Mohali). The learned Additional Sessions Judge concerned declined to interfere with the order, as, made by the learned Judicial Magistrate concerned, and, as carried in Annexure P-2.

4. It appears that both the learned Courts below, laid much emphasis upon the proviso to clause 2 of Section 78 of the Punjab Excise Act, wherein occurs a mandate, that a seized conveyance or the offending conveyance can be released, to the registered owner, hence during pendency of the trial, hence on submission of security in the form of cash or bank guarantee equivalent to the value of conveyance.

5. Though both the learned Courts below appear to found their respective reasoning(s), upon, the afore statutory provision. However, none of the Courts below has made any endeavour to determine the value of the seized conveyance/offending vehicle. The gross failure on the part of both the Courts below, to seek a credible valuation along with apposite depreciation, of the seized conveyance/offending vehicle, naturally has resulted in both untenably, hence without any firm evidentiary strata, making an erroneous conclusion that the value of the seized/offending conveyance, is carried in a sum of Rs.3,00,000/-. Obviously also both the learned Courts below proceeded to cause hardship and also jeopardised the right(s) of the registered owner concerned, to seek release, on proven valuation along with apposite depreciation, during pendency of the trial, of the offending/seized vehicle.

6. Though for the afore, this Court is constrained to interfere with

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the above order. However, there is no tangible evidence existing on record of this Court, suggestive that the value of the seized conveyance/offending vehicle, along with the apposite depreciation is much less Rs.3,00,000/-. Therefore, it is open to the counsel for the petitioner to produce qua supra credible evidence before the learned Magistrate concerned, suggestive of the exact value of the offending conveyance/offending conveyance, hence to enable the learned Magistrate to impose strictly at par with its credible extant valuation, a, valid condition viz-a-viz. the petitioner depositing cash or bank guarantee equivalent to the extant value of the offending/seized conveyance.

7. Consequently, the learned counsel for the petitioner, may file the above credible valuation within 02 weeks, before the learned Magistrate concerned, and, the latter shall after giving an opportunity of hearing to all the concerned, shall within 03 weeks thereafter, make a fresh order, in accordance with law, upon, the apposite application.

8. Disposed of.

(SURESHWAR THAKUR)
JUDGE

February 01, 2022.

sandeep

Whether speaking/reasoned:-

Yes/No

Whether Reportable:-

Yes/No