

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

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CRM-M-15091-2023

Date of decision : 20.07.2023

Lakhvir Singh**..... Petitioner****versus****State of Haryana****..... Respondent****CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. A.K. Sharma, Advocate
for the petitioner.

Mr. Ashok Kumar Sehrawat, DAG, Haryana.

PANKAJ JAIN, J. (Oral)

1. Petitioner is before this Court in a petition under Section 482 Cr.P.C. seeking quashing of the order dated 07.09.2022 (Annexure P-5) passed by competent authority under Haryana Gauvansh Sanrakshan and Gausamvardhan Adhiniyam, 2015 (in short '2015 Adhiniyam') and the order dated 10.01.2023 (Annexure P-7) passed by Deputy Commissioner, Hisar exercising appellate powers under Section 17(5) of the Act affirming the order dated 07.09.2022 passed by the competent authority.

2. An FIR No.543 dated 25.05.2022, registered for the offences punishable under Sections 279/336 IPC and Section 13(1)(2) HGS & Cruelty to Animal Act, Police Station Barwala, came into being on 25.05.2022 on the complaint made by one Mohit.

3. As per the case of the prosecution, it has been alleged as under:-

“That during the course of investigation, SHO,
P.S. Barwala vide his letter No. 2466 dated

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14.6.2022, moved an application before Sub-Divisional Magistrate, Barwala for confiscation of the vehicle under the provisions of Haryana Gau Sanrakshan Evam Gau Samwardhan Adhiniyam, 2015. In pursuance of which the notice was given to the accused person and during the course of arguments before Sub-Divisional Magistrate, Barwala, accused person produced evidence with regard to purchase of two cows, but he was unable to produce the record pertaining to 12 calves. Moreover, there was no permit for transportation of said cows from one state to another and it was found that the accused had violated the provisions of section 5 and section 6 of Haryana Gau Sanrakshan Evam Gau Samwardhan Adhiniyam, 2015, therefore, vide order dated 7.9.2022, the vehicle bearing registration No. PB 11CM 7734 was confiscated by Sub-Divisional Magistrate, Barwala.”

4. As per the contents of the FIR, vehicle owned by the petitioner i.e. Eicher truck bearing registration No.PB 11 CM 7734 was intercepted loaded with 14 calves. The vehicle was seized. As per the State, during course of investigation vide communication No.2466 dated 14.06.2022, an application was moved before the competent authority under the Act for confiscation of the vehicle under provisions of 2015 Adhiniyam which led to passing of the order under Section 17(2).

5. The petitioner filed appeal as provided under the provisions of Section 17(5) which stands rejected vide impugned order dated 10.01.2023. The aforesaid orders have been impugned in the present petition by the petitioner claiming that he moved an application for release of vehicle on superdari which has been wrongly rejected and there

is no reason for the authorities below to decline the application moved by the petitioner.

6. Counsel for the petitioner submits that the only allegation against the petitioner is that he was owner of the vehicle in which calves were being transported.

7. Per contra, counsel for the respondent however submits that in terms of power contained under Section 17(3), no Court has power to release the vehicle and it is only the competent authority who have jurisdiction to make order w.r.t. possession, delivery, disposal, release of such vehicle. It has been further claimed that the investigation of the case is complete. The final report under Section 173 Cr.P.C. stands filed against the accused and once the vehicle stands confiscated and the orders stand affirmed by the appellate authority, present petition under Section 482 Cr.P.C. is not maintainable.

8. I have heard counsel for the parties and have gone through the records of the case.

9. It is not disputed that the present vehicle has been seized in relation to offence punishable under Section 13 of 2015 Adhiniyam. The law w.r.t. exercise of Section 482 Cr.P.C. by this Court stands answered by the Apex Court in the case of '**Janta Dal vs. H.S. Chowdhary and others**', (1992) 4 SCC 305, wherein Apex Court held as under:-

“125. Section 482 which corresponds to Section 561 A of the old Code and to Section 151 of the Civil Procedure Code proceeds on the same principle and deals with the inherent powers of the High Court. The rule of inherent powers has its source in the maxim "Quaerens legem aliquid aliqui concedit, concedere videtur

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id sine quo ipsa, esse non potest" which means that when the law gives anything to anyone, it gives also all those things without which the thing itself could not exist.

126. The Criminal Courts are clothed with inherent power to make such orders as may be necessary for the ends of justice. Such power though unrestricted and undefined should not be capriciously or arbitrarily exercised, but should be exercised in appropriate cases, ex debito justitiae to do real and substantial justice for the administration of which alone the Courts exist. The powers possessed by the High Court under section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Courts must be careful to see that its decision in exercise of this power is based on sound principles.

127. The Judicial Committee in (1) *Emperor v. Nazir Ahmed, AIR 1945 Privy Council 18, 22* and (2) *Lala Jai Ram Das v. Emperor, (1945) 47 Bom LR 634* has taken the view that Section 561 A of the old Code gave no new powers but only provided that those which the Court already inherently possessed should be preserved. This view holds the field till date.

128. This Court in *Dr. Raghubir Sharan v. State of Bihar, (1964) 2 SCR 336* had an occasion to examine the extent of inherent power of the High Court and its jurisdiction when to be exercised. Mudholkar, J. speaking for himself and Raghubar Dayal, J. after referring a series of decisions of the Privy Council and of the various High Courts held thus:

".....every High Court as the highest Court exercising criminal jurisdiction in a State has inherent power to make any order for the

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purpose of securing the ends of Justice.....Being an extraordinary power it will, however, not be pressed in aid except for remedying a flagrant abuse by a subordinate Court of its powers"

129. See *Talab Hazi Hussain v. Madhukar Purshottam Mondkar*, 1958 SCR 1226 and *Pampapathy v. State of Mysore*, 1966 (Supp) SCR 477.

130. Thus, the inherent power under this Section can be exercised by the High Court (1) to give effect to any order passed under the Code; or (2) to prevent abuse of the process of any Court; or (3) otherwise to secure the ends of justice. In relation to exercise of inherent powers of the High Court, it has been observed in *Madhu Limaye v. State of Maharashtra*, AIR 1978 Supreme Court 47 = (1978) 1 SCR 749, that the power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party and that it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice and that it should not be exercised as against the express bar of law engrafted in any other provision of the Code. Vide (1) *Talab Hazi Hussain v. Madhukar Purshottam*, AIR 1958 Supreme Court 376 = 1958 SCR 1226; (2) *Khushi Ram v. Hashim*, AIR 1959 Supreme Court 542; and (3) *State of Orissa v. Ram Chander Agarwala*, AIR 1979 Supreme Court 87 = (1979) 1 SCR 1114."

10. Thus, this Court finds that in order to secure the ends of justice, this Court is not precluded from exercising its extra ordinary power enumerated under Section 482 of the Code and invoked by the

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petitioner as admittedly there is no other remedy available to the petitioner under the Act. Moreover, there is no dispute w.r.t. the facts leading to the present case and the question is:-

- (i) whether the impugned orders by passed by the authorities are in consonance with the provisions of the Act or not?

11. Coming on to the merits of the case, 2015 Adhiniyam was enacted to provide for Gauvansh Sanrakshan and Gausamvardhan and to establish institutions to accept, keep, maintain and care the infirm, injured, stray and uneconomic cows in the State of Haryana.

12. As per Section 13 of the Ahiniyam, contraventions of provisions of Sections 3, 4, 5 and 8 constitute offence punishable as provided under Section 13. Sections 16 and 17 deal with power to enter, seize etc. and confiscation of vehicles. The relevant provisions of the Adhiniyam read as under:-

“3. Prohibition of cow slaughter. - Notwithstanding anything contained in any other law for the time being in force or any usage or custom to the contrary, no person shall slaughter or cause to be slaughtered or offer or cause to be offered for slaughter any cow in any place in the State:

Provided that killing of a caw in an accident or self defence shall not be considered as slaughter under the Act.

4. Exceptions.- (1) Nothing contained in section 3 shall apply to the slaughter of a cow where a certificate has been issued in the prescribed form by the Registered Veterinary Practitioner of the department in the area for a cow, -

- (a) whose suffering is such so as to render its

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destruction desirable; or

(b) who is suffering from any notified contagious or infectious disease; or

(c) who is subjected to experimentation in the interest of medical, veterinary and public health research.

(2) Where it is intended to slaughter a cow for the reasons specified in sub-section (1) above, it shall be incumbent for a person doing so to first obtain the certificate in writing as mentioned under the said sub-section.

(3) The removal of skin and hide from dead caws, other than slaughtered cows, by the authorized contractor shall not be construed as cow slaughter:

Provided that the authorized contractor engaged in removal or transportation of skin and hide from the dead cows, other than slaughtered cows, shall obtain the authorization to this effect from the competent authority.

5. Restriction on export. - No person shall export or cause to be exported cow for the purpose of slaughter either directly or through his agent or servant or any other person acting on his behalf in contravention of the provisions of this Act or with the knowledge that it shall be or is likely to be slaughtered.

8. Prohibition of sale of beef.- Notwithstanding anything contained in any other law for the time being in force, no person shall directly or indirectly sell, keep, store, transport or offer for sale or cause to be sold beef or beef products except for such medicinal purposes and in such form as may be prescribed.

13. Offences. - (1) Whoever contravenes or attempts to contravene or abets the contravention of the

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provisions of section 3 or 4 shall be guilty of an offence punishable with rigorous imprisonment for a term which shall be not less than three years and may extend to ten years and fine which shall not be less than thirty thousand rupees and may extend to one lac rupees. In case of default in payment of fine, additional imprisonment, which may extend to one year, be imposed in lieu of the fine.

(2) Whoever contravenes or attempts to contravene or abets the contravention of the provisions of section 5 shall be guilty of an offence punishable with rigorous imprisonment for a term which shall not be less than three years and may extend to seven years and fine which shall not be less than thirty thousand rupees and may extent to seventy thousand rupees. In case of default in payment of fine, additional imprisonment which may extend to one year may be imposed in lieu of the fine.

(3) Whoever contravenes or attempts to contravene or abets the contravention of the provisions of section 8 shall be guilty of an offence punishable with rigorous imprisonment for a term which shall not be less than three years and may extend to five years and fine which shall not be less than thirty thousand rupees and may extend to fifty thousand rupees. In case of default in payment of fine, additional imprisonment which may extend to one year may be imposed in lieu of the fine.

16. Power to enter, seize etc.- (1) Any police officer not below the rank of Sub Inspector or any person authorized in this behalf by the Government, with a view to secure compliance with the provisions of this Act or for satisfying himself that the provisions of this Act have been complied, may

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(a) enter, stop and search any vehicle used or intended to be used for the export of [cow or beef];

(b) seize cow or beef in respect of which he suspects that any provision of this Act has been, is being or is about to be contravened, along with the vehicle in which such cow or beef is found, and thereafter take all measures necessary for securing the production of the cow or beef so seized, in a court and for the safe custody pending such production];

(c) enter and search any premises used or intended to be used for the slaughter of cow and seize com or beef and collect evidence from the spot including Instruments and documents used or Intended to be used regarding activities related to slaughter and export of cow or beef.];

(2) The provisions of section 100 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), relating to search shall, so far as may be, apply to search and seizure under this Act.

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) Where 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,

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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.”

13. As per Section 17(1), any vehicle used in commission of offence punishable under the Ahiniyam is liable to be seized by the police officer of the rank prescribed. As per Section 17(2), where any vehicle is seized under Section 17(1), the report about the same without unreasonable delay has to be made to the competent authority and whether or not a prosecution is instituted for commission of offence, the competent authority having jurisdiction over the area, if satisfied that the vehicle was used for commission of offence under the Act, shall order confiscation of the said vehicle. However, the proviso to the provision mandates that a reasonable opportunity of being heard has to be afforded to the owner of the said vehicle. Section 17(5) provides for appeal against the order passed by the competent authority under Section 17(2). Thus, as per the scheme of Section 17 which itself is a complete code, the primary ingredients to confiscate a vehicle are as under:-

- “(i) User of a vehicle in a commission of offence punishable under the Act makes it liable to be seized by the police officer not below rank of Sub-Inspector;
- (ii) Once the vehicle is seized under Section 17(1), the person who seized the vehicle is under obligation to report about such seizure to the competent authority without unreasonable delay;
- (iii) Competent authority as defined under Section 2(b) means the concerned Sub-Divisional Magistrate and any other officer appointed by the Government for exercising the power under this Act;
- (iv) If the competent authority is satisfied that the vehicle was used for commission of offence under the Act, it may order confiscation of the offending vehicle;

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(v) However, the order of confiscation of the said vehicle cannot be passed without affording reasonable opportunity of hearing to the owner of the said vehicle.

(vi) The order of confiscation of a vehicle is not dependent upon institution of prosecution for offence.

(vii) The order of confiscation of a vehicle is not dependent upon institution of prosecution for offence.”

14. In the present case, the State Counsel was asked to show the seizure report qua the vehicle in question sent to the competent authority. He fairly admits that there is no such report on the record. The only document being relied upon by the State is a communication dated 14.06.2022 bearing No.2466 by SHO, Police Station Barwala requesting the competent authority to pass order of confiscation which is after 19 days of the seizure of the vehicle in question. The impugned order passed by the competent authority (Annexure P-5) shows that the same has been passed by the authority holding that there is a violation of Sections 5 and 6 of the 2015 Adhiniyam. Violation of Section 6 is no offence prescribed under Section 13. Though there is allegation that the petitioner could not produce any evidence to show how he purchased 12, out of 14 calves and could produce certificate only w.r.t. purchase of 2 calves, but neither the complaint on the basis of which the prosecution has been launched nor any other evidence is on record on the basis of which it can be said that the calves were being transported for the purpose of slaughter. Moreover, there is no evidence to show that the calves were being exported. More so when Section 2(f) defines export to being taking out cow from the State of Haryana to any other place, the vehicle was apprehended within the State

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of Haryana and not on any of the checkpost. Apart from recording finding that there is violation of provisions contained in Sections 5 and 6 of the 2015 Adhiniyam, there is no reason recorded by the competent authority as to how it formed such opinion when there is not even any allegation in the original complaint itself. The order passed in appeal too is a non-speaking order passed without any application of mind. Appellate authority has found that the petitioner has not been able to produce permits/national permit, fitness certificate of the vehicle and the permit qua the cattle. Thus, the order passed by the competent authority is good.

15. This Court finds that the authorities below have completely misread the provision of Section 17 of the 2015 Adhiniyam. The authorities are required to record satisfaction that the vehicle was used for commission of offence under 2015 Adhiniyam to order confiscation of the vehicle. The said satisfaction has to be backed by material on record. The officer who seizes the vehicle is required to report about the seizure of vehicle in connection with the commission of any offence punishable under the Act without unreasonable delay. The said report must be backed by cogent material which discloses involvement of vehicle in commission of offence punishable under the Adhiniyam. The authorities must be conscious of the fact that the legislature intended, these to be independent in proceedings and that is why institution of prosecution qua commission of offence was kept to be inconsequential qua these proceedings. The report to be filed before the competent authority by the officer seizing the vehicle, thus must disclose the material on the basis of which satisfaction can be recorded by the competent authority regarding

involvement of the vehicle in commission of offence punishable under the Act. Mere information w.r.t. seizure of vehicle cannot take place of such report. Proviso to Section 2 further provides that before passing order regarding confiscation of the said vehicle, the owner of the vehicle needs to be provided with the reasonable opportunity of being heard. The reasonable opportunity of being heard means that the said report filed by the seizing officer before the competent authority must be shared with the owner of the vehicle as well so that he can respond to the material on record before extreme order of confiscation of vehicle can be passed against him. The objective behind providing reasonable opportunity of hearing is not merely for the reason that the order involves civil consequences, but in these cases, the vehicle is source of livelihood for the owners of such vehicles.

16. In the present case, leave aside serving copy of such report upon the petitioner, the report has not even been prepared.

17. In view of above, this Court finds that the orders passed by the competent authority as well as the appellate authority are in violation of the procedure laid down under Section 17 of the Adhiniyam and cannot be sustained. The same has resulted engross injustice to the petitioner and thus finding it to be a fit case to exercise jurisdiction under Section 482 Cr.P.C.

18. Consequently, the present petition is allowed to secure the ends of justice. The impugned orders 07.09.2022 and 10.01.2023 (Annexures P-5 and P-7) are hereby ordered to be set aside. The authorities are ordered to release the vehicle to the petitioner on superdari within a period of two weeks from the date of receipt of certified copy of

this order.

19. Ordered accordingly.

(PANKAJ JAIN)
JUDGE

20.07.2023
Dinesh

Whether speaking/reasoned	Yes
Whether Reportable :	Yes