

Hazara Singh.....Appellant

Versus

State of Haryana..... Respondent

CORAM: HON’BLE MR. JUSTICE ARUN MONGA

Present: Mr. Ramnish Puri, Advocate and
Ms. Monika Tanwar, Advocate,
for the appellant.

Mr. Karan Garg, AAG, Haryana.

ARUN MONGA, J.(ORAL)

The present appeal has been directed against the impugned judgment dated January 23, 2019 passed by learned Additional Sessions Judge, Yamuna Nagar at Jagadhari vide which vehicle bearing registration No. PB-11BU-0403 was ordered to be confiscated to the State in view of Section 17 of the Haryana Gauvansh Sanrakshan& Gau Samvardhan Act, 2015 (hereinafter referred to as ‘the Act’).

2. Succinct facts first, as pleaded in the instant appeal.

2.1. Appellant herein is the registered owner of the vehicle make Bolero bearing registration number PB-11BU-0403 (hereby referred as ‘Vehicle in question’). Registration certificate of the aforesaid vehicle is contained at Annexure A-1. Vide impugned judgment dated January 23, 2019, Learned Additional Sessions Judge, Yamuna Nagar at Jagadhari sentenced accused Gurvinder Singh (non-appellant) as under:

Gurvinder Singh (accused) (Non-Appellant)

Sections	Sentence
279 IPC	Rigorous imprisonment for a period of six months and to pay fine of ₹1000/-. In default of payment of fine, the convict shall undergo simple imprisonment for a period of one month.

337 IPC	Rigorous imprisonment for a period of six months and to pay fine of ₹500/-. In default of payment of fine, the convict shall undergo simple imprisonment for a period of one month.
427 IPC	Rigorous imprisonment for a period of one year and to pay fine of ₹1000/-. In default of payment of fine, the convict shall undergo simple imprisonment for a period of one month.
Section 13(2) of the Act	Rigorous imprisonment for a period of four years and to pay fine of ₹50,000/-. In default of payment of fine, the convict shall undergo simple imprisonment for a period of three months.

2.2. The aforesaid accused, namely, Gurvinder Singh has already challenged his conviction by preferring CRA-S No. 361 of 2019 which was admitted vide order dated February 06, 2019 (Annexure A-2). Said accused has already been granted the concession of suspension of sentence by a coordinate bench of this Court vide order dated May 29, 2019 (Annexure A-3).

2.3. The appeal filed by accused Gurvinder Singh challenging his conviction and sentence is not likely to be decided at an early date due to heavy pendency of the cases before this Court and as such it would not be desirable to keep the vehicle confiscated to the State in custody as it will diminish the value of vehicle. Keeping the vehicle confiscated in the custody of State would serve no purpose at all more particularly as the vehicle in question is neither involved in any other case nor the adjudication of the appeal challenging the conviction (CRA-S 361 of 2019) is not going to take place in the near future.

2.4. The vehicle in question will reduce into junk and it will become unfit for road worthiness with the passage of time and machinery, colour, tyres etc. would too get damaged beyond repair. Apart from this, the appellant herein has to pay monthly installments of the loan in respect of the said vehicle. Moreover, the said vehicle is the only means for the appellant to earn his livelihood as he earns money through transportation of said vehicle.

3. The instant appeal was filed with an application seeking condonation of delay of 359 days and notice was issued for condonation of delay in filing the present appeal vide order dated January 11, 2021. Pursuant to the notice issued in the application, a reply was filed on behalf of the respondent-State by way of an affidavit dated September 24, 2021 of Mr. Ashish Chaudhary, Deputy Superintendent of Police, Bilaspur which was ordered to be taken on record vide order dated October 26, 2021. It is also submitted that vide order of even date, the application for condonation of delay was allowed and notice in the main appeal was also issued.

4. The main controversy in the instant appeal is whether the vehicle deserves to be released or not.

5. Learned counsel for the appellant contends that learned Trial Court was not justified in ordering of the confiscation of the vehicle as even as per section 17 of the Act, it is only the competent authority as is referred in the said provision that can order confiscation of the vehicle, within its jurisdiction and the same is not available with learned trial Court. It is further argued that as per section 2(d) of the Act the competent authority is concerned Sub Divisional Magistrate and includes any other officer appointed by the Government for exercising the power under the Act. Learned counsel would further urge that learned Trial Court has exceeded its jurisdiction while passing the impugned judgment. Apart from this, as per learned Counsel for the appellant, a reasonable opportunity of being heard to the owner of vehicle is a statutory requirement as per proviso to section 17(2) of the Act which was not granted to the appellant in terms of the aforesaid provision.

6. Per contra, the Learned State counsel has placed on record reply dated October 17, 2023 by way of affidavit of Parmod Kumar, HPS, Deputy Superintendent of Police-III, Yamuna Nagar on behalf of respondent – State of Haryana and submits that no appeal against the confiscation order lies before this Hon'ble Court and present appeal is not maintainable. Under instructions from ASI Kushal Pal, he vehemently opposes the instant appeal and submits that the vehicle was involved in transportation

of two cows and a calf without any license in this regard. Learned State counsel further canvasses that learned Trial Court has rightly passed the impugned judgment.

7. I have heard the learned counsel for the parties and with their able assistance have gone through the record of the case.

8. On October 26, 2021, a Coordinate Bench of this Court, then seized of the matter, had passed the following order:

“CRM-27582-2020

Pursuant to notice issued in this application, a reply has been filed on behalf of the respondent-State by way of an affidavit of Sh. Ashish Chaudhary, Deputy Superintendent of Police, Bilaspur, dated 24.09.2021 which is ordered to be taken on record.

In the reply it is stated that the applicant-appellant being obviously fully aware of the impugned judgment against him he cannot take the plea of being a layman who was not well versed with legal provisions and consequently, there is no ground for condoning the delay in filing the accompanying appeal.

Having considered that contention, though it otherwise may be a valid one, however, looking at the fact that learned counsel for the applicant-appellant has raised an important question of law to the effect that the learned court passing the impugned judgment itself has gone beyond jurisdiction in ordering confiscation of the vehicle in question (as contended), it is considered appropriate to condone the delay in filing the accompanying appeal.

Consequently, this application is allowed and the delay of 359 days in filing the accompanying appeal is hereby condoned.

CRA-S-1449-2020

Notice of motion.

On the asking of the court, Mr. Neeraj Poswal, A.A.G. Haryana accepts notice on behalf of the respondent-State.

A copy of the appeal be emailed to learned State counsel by counsel for the appellant today itself.

Adjourned to 20.01.2022.

A reply be filed by the respondent-State, in terms of what has been argued by learned counsel for the appellant, who submits that even in terms of Section 17 of the Haryana Gauvansh Sanrakshan and Gausamvardhan Act, 2015, as has been relied upon by the trial court to confiscate the vehicle of the appellant, it is only the competent authority as is referred to in the said provision that can order confiscation of the vehicle, with that jurisdiction not being available with the court seized of the trial.

In the meanwhile, the vehicle in question be not disposed of and be kept in good condition, at the petitioner's expense.”

9. Apropos learned State counsel argues that vehicle has been confiscated in accordance with Section 17 of Act.

10. Be that as it may, no opportunity of hearing was given to the appellant before passing the impugned order. Moreover, the appeal filed by accused Gurvinder

Singh challenging his conviction is only of year 2019 and is not likely to be heard at an early date and as such no purpose would be served by keeping the vehicle in custody more particularly as the vehicle is not stated to be involved in any other case and the order of confiscation is inherently without any jurisdiction.

11. Perusal of the above Section clearly reflects that it is the competent authority who is authorized to seize and impound the vehicle. It transpires that under Section 2 (d) of the Act, competent authority under the Act is learned Sub Divisional Magistrate i.e. SDM.

12. Be that as it may, since the appeal is pending, vehicle is directed to be restored/released on Sapurdari to the registered owner subject to usual undertaking to the satisfaction of learned *Illaq*a Magistrate till decision of the appeal bearing CRA-S 361 of 2019.

13. The instant appeal is disposed of accordingly.

14. Pending application(s), if any, shall also stand disposed of.

October 19, 2023
vandana

(ARUN MONGA)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No