

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : CRM-M-45080-2021

Date of Decision : January 05, 2023

Sachin Baliyan

.... Petitioner

vs.

State of Haryana

.... Respondent

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Shalender Mohan, Advocate
for the petitioner.

Mr. Karan Sharma, DAG, Haryana.

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GURBIR SINGH, J. :

This petition under Section 482 Cr.P.C. has been filed by the petitioner for quashing the impugned order dated 21.09.2021 (Annexure P-5) passed by learned Additional Sessions Judge, Hisar, vide which the Revision Petition filed by the petitioner has been dismissed against the order dated 10.02.2021 (Annexure P-2) passed by learned Judicial Magistrate Ist Class, Hansi and also against the order dated 23.06.2021 (Annexure P-3) passed by learned Sub Divisional Magistrate, Hansi, with a further prayer to quash the aforesaid two orders dated 10.02.2021 and 23.06.2021 as well (Annexures P-2 and P-3 respectively).

Learned counsel for the petitioner contends that the application submitted by the petitioner for seeking release of the vehicle bearing registration No.RJ-14-GJ-6730 was dismissed by learned Judicial Magistrate Ist Class, Hansi vide order dated 10.02.2021 (Annexure P-2) on

the ground that the petitioner had a remedy to prefer appeal to the Deputy Commissioner of the concerned district to get relief under Section 17(5) of the Haryana Gauvansh Sanrakshan and Gausamvardhan Act, 2015 (hereinafter referred to as – the Act).

Accordingly, when the petitioner approached the Court of learned Sub Divisional Magistrate, Hansi, in terms of the said order (Annexure P-2), his application was dismissed vide order dated 23.06.2021 (Annexure P-3), with the observation that the vehicle in question was used in cow smuggling and therefore, his vehicle was liable to confiscation.

Aggrieved from both these orders (Annexures P-2 and P-3), Revision Petition was filed before the Court of learned Additional Sessions Judge, Hisar, who again dismissed the same observing that no ground was made out for releasing the vehicle on *superdari* because the vehicle had already been confiscated by Sub Divisional Magistrate, Hansi.

Learned counsel for the petitioner has placed reliance on various orders passed by Co-ordinate Benches of this Court ordering release of vehicles on *superdari* i.e. in the case of **Mosin vs. State of Haryana** (CRM-M-42961-2017, decided on 06.12.2017), **Rajesh Kumar vs. State of Haryana** (CWP-22179-2019, decided on 21.12.2020) and **Rinku vs. State of Haryana** (CRM-M-44134-2020, decided on 05.01.2021)

Hence, this petition.

On the other hand, learned State counsel has submitted that in view of the bar under Section 17(3) of the Act, once the competent Authority has ordered confiscation of a vehicle, the Courts below have

rightly dismissed the application for getting released the vehicle on *superdari*.

Learned State counsel, in support of his case, has also placed reliance on a judgment passed by Hon'ble Supreme Court in the case of **Mustafa vs. State of Uttar Pradesh & Ors.** reported as **2019 AIR (Supreme Court) 3949**, a judgment of this Court in **Taroon @ Taarun Khan vs. State of Haryana** (CRM-M-19304-2020, decided on 01.10.2020) and also in **Sahabuddin vs. State of Haryana** (CRM-M-5686-2017, decided on 09.05.2018).

I have heard learned counsel for the parties and perused the case record.

For ready reference, Section 17 of the Act is reproduced hereunder :-

“(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 confiscated 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 confiscated in connection with the commission of any offence punishable under this Act, a report about the same, without unreasonable delay 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 confiscated, 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 then 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.”

A bare perusal of the record reveals that the vehicle in question was parked at the Police Station on 03.02.2020 and since then, the vehicle has not been released. It has been 02 years and 11 months that the vehicle is in the possession of Police Authorities, thereby resulting in deterioration of the vehicle. Moreover, it is not disputed that Co-ordinate Benches of this Court have ordered the release of vehicles on superdari, as has been relied upon by learned counsel for the petitioner in the cases of **Mosin** (*supra*), **Rajesh Kumar** (*supra*) and **Rinku** (*supra*).

Consequently, without commenting upon the merits of the case and taking into consideration the totality of circumstances detailed above, the present petition is allowed and the vehicle bearing registration No.RJ-14-GJ-6730 is ordered to be released on superdari to its registered owner, subject to satisfaction of the concerned Illaqa/Duty Magistrate.

However, nothing contained herein above shall be construed as an expression of opinion on the merits of the case.

January 05, 2023
monika

(GURBIR SINGH)
JUDGE

<i>Whether speaking/reasoned ?</i>	<i>Yes.</i>
<i>Whether reportable ?</i>	<i>Yes.</i>