

CRM-M-23779-2024

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-23779-2024
Reserved on: 06.09.2024
Pronounced on: 26.09.2024

Sakeel Ahmed ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Nafees Ahmad Khan, Advocate
for the petitioner.

Mr. Aashish Bishnoi, DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
21	14.01.2022	Sadar Hansi, District Hisar	13(2), 17 & 11 of Prevention of Cruelty of Animals Act 1960, Section 13(2)/17 of Haryana Gauvansh Sanrakshan and Gausamvardhan Act 2015

1. Seeking the quashing of the confiscation order passed by the Competent Authority (SDM) and the dismissal of the revision petition, the petitioner, the vehicle's owner, came up before this Court under Section 482 CrPC, 1973.
2. I have heard counsel for the parties and gone through the record, and its analysis would lead to the following outcome.
3. Facts have been taken from the reply dated 16.08.2024 filed by the concerned DySP, which reads as follows: -

“2. That, the brief facts of the case are that consequent upon the seizure of truck bearing registration number HR-55AE/3242 loaded with Gauvansh, in the abovementioned FIR against Azad son of Deenu. It is further submitted that 17 Gauvansh (13 Ox and 4 Cow) were found loaded in the alleged truck. Out of them, two had expired. They were allegedly being transported for the purpose of slaughtering. The vehicle alongwith Gauvansh was taken into police possession. The cows and bulls were

CRM-M-23779-2024

released to Hansi Gaushala on interim custody. The registered owner of the truck was discovered to be Shakeel Ahmed (Present Petitioner) son of Mahmood resident of Badka. After seizure of the vehicle, the State moved an application before the Competent Authority i.e. Sub-Divisional Magistrate, Hansi for the confiscation of the truck bearing registration number HR- 55AE/3242 and the same was allowed by Learned Sub-Divisional Magistrate, Hansi.”

4. The authorized Police officer seized the vehicle mentioned above under Section 17 of The Haryana Gauvansh Sanrakshan and Gausamvardhan Act 2015 (hereinafter referred to as HGSG Act). A perusal of the application for confiscation of the above-said vehicle (Annexure P-2) reveals that Sub Inspector Naresh Kumar conducted the investigation and seized the vehicle. After that, he filed an application before the Sub Divisional Magistrate, Hansi, to confiscate the vehicle.

5. S. 17(1) & (2) of HGSG Act read as follows:

17. (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.

CRM-M-23779-2024

(5) Any person aggrieved by an order made by the competent authority under subsection (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.

6. S. 2(d) of HGSG Act, defines 'Competent Authority' in the following terms,

S.2(d) "competent authority" means the concerned Sub-divisional Magistrate and includes any other officer appointed by the Government for exercising the powers under this Act.

7. Vide order dated 10.04.2024, SDM, the Competent Authority, had ordered the confiscation of the vehicle. A perusal of the order reveals that the case was titled State vs. Azad, and Azad was the person who was arraigned as one of the accused because he was the driver of the alleged truck. As per Annexure R1, which is the vehicle's particulars, annexed in the reply, it is the petitioner-Sakeel Ahmed, who is the registered owner of the said truck.

8. A perusal of the impugned order dated 10.04.2024, passed by the Competent Authority, reveals that the memo of parties was State vs. Azad. The Assistant Director represented the State, whereas the respondent, Azad, was represented by a counsel. Thus, the concerned SDM/Competent Authority misunderstood that the person who was required to be heard under Proviso to Section S.17(2) of the HGSG Act. On the face of it, the Competent Authority did not hear the truck owner, who was the affected person in terms of Section 17 of the HGSG Act.

9. Feeling aggrieved, the petitioner challenged the said order by filing a criminal revision petition titled Shakeel Ahmed v. State of Haryana, and Azad was not even arraigned as a party. The Additional Sessions Judge also did not consider the foundational illegality committed by the SDM and repeated the same because the person whose interest was being affected was never heard at the initial stage.

10. The proviso to S. 17(2) explicitly mandated that before ordering the confiscation of the said vehicle, a reasonable opportunity of being heard shall be afforded to the owner of the said vehicle. In the present case, the competent authority did not grant any opportunity at all to the vehicle's owner, what to speak about a reasonable opportunity.

11. Thus, while passing the order of confiscation of the vehicle, the Competent Authority neither provided any opportunity to the vehicle's owner nor was the vehicle's owner heard.

12. However, S 17(5) of the Statute The Haryana Gauvansh Sanrakshan and Gausamvardhan Act 2015, [HGSG Act] mandates that any person aggrieved by an order

CRM-M-23779-2024

made by the competent authority under subsection (2) or sub-section (4) may, within thirty days from the date of such order, prefer an appeal to the Deputy Commissioner of the district concerned. The petitioner did not file any appeal under S. 17(5) of the HGSG Act and instead filed a Criminal Revision petition before Sessions Court. Further, the legislature has also taken away the jurisdiction of courts, tribunals, or other authorities regarding the confiscation of vehicles and has conferred such jurisdiction only to the competent authority.

13. The proposition of law that emerges is whether the Sessions Court and the High Court on the Criminal Side have jurisdiction under Ss. 397, 399, 401, and 482 of CrPC, 1973 or Ss. 438, 440, 442, and 528 of BNSS, 2023, to check the correctness, legality, or propriety of an order passed by the Competent Authority under the HGSG Act when either the vehicle's owner is not heard at all or the Competent Authority or the Deputy Commissioner did not provide a reasonable opportunity of being heard?

14. S. 438 of BNSS, 2023, which corresponds to S. 397 of CrPC, 1973, reads as follows:

438. (1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling, for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement that he be released on his own bond or bail bond pending the examination of the record.

Explanation.—All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of section 439.

(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.

15. Per explanation to S. 438, the legislature, even in the new Avatar of CrPC, made all Magistrates, including the Executive or Judicial deemed to be inferior to the Sessions Court and the Higher Criminal Courts [438 (1) BNSS], when Sessions Court and the Higher Criminal Courts exercise their criminal jurisdiction to satisfy themselves as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings.

16. Given the above, the Sessions Court and the High Court while exercising powers

CRM-M-23779-2024

under Ss. 397, 401, and 482 of CrPC, 1973 or Ss. 438, 442, and 528 of BNSS, 2023, have the jurisdiction to hear the Criminal Revision Petition when either the vehicle's owner is not heard at all, or the Competent Authority or the Deputy Commissioner did not provide a reasonable opportunity of being heard. Given the above, the statutory restriction to file an appeal under section 17(5) of the HGSG Act against the order of confiscation only before the Deputy Commissioner cannot take away the powers of criminal courts under Ss. 397, 401, and 482 of CrPC, 1973 or Ss. 438, 442, and 528 of BNSS, 2023, to the extent mentioned above.

17. The Court believes that the petitioner *de jure* had the statutory rights to file a revision petition before the Sessions Court and also to invoke the inherent jurisdiction of the High Court on the Criminal Side instead of exhausting the remedy provided under Section 17 of the Statute, which says that appeal against confiscation preferred before the Deputy Commissioner.

18. An offshoot of the above-mentioned discussion clearly points out that the registered owner of the vehicle was never heard by the Competent Authority, which was a statutory requirement under the proviso to S. 17(2) of the HGSG Act. It reminds of the legal maxim *recti est injuria*. The SDM, acting as a *quasi-judicial* authority, was under an obligation to follow the statutory requirements, as was the additional Sessions Judge, and they did not.

19. In the entirety of facts and circumstances, the petition is allowed. The impugned order of confiscation dated 10.04.2024 is quashed and set aside. The vehicle be released immediately to the vehicle owner with an undertaking that in case it is required to be produced in the Court, he shall do so, and further, if he sells the vehicle to any person, the said person shall also be under obligation to produce the said vehicle, if called upon to do so. It is further clarified that the petitioner shall not transfer the vehicle without obtaining permission from the Competent Authority.

20. **Petition allowed.** All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

26.09.2024
anju rani

Whether speaking/reasoned: Yes
Whether reportable: YES.