



2025:DHC:3245



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 24.04.2025

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CRL.M.C. 6616/2024

MANOJ KUMAR YADAV

.....Petitioner

Through: Mr. N.R. Swetabh, Advocate
(through vc)

versus

STATE OF NCT DELHIRespondent

Through: Mr. Hitesh Vali, APP for the
State.**CORAM****HON'BLE MR. JUSTICE RAVINDER DUDEJA****JUDGMENT (ORAL)****RAVINDER DUDEJA, J.**

1. This is a petition under Section 528 of Bhartiya Nagarik Suraksha Sanhita [**"BNSS"**], 2023, for setting aside the order dated 16.08.2024 in Misc. Criminal 2189/2024, in case titled "*State Vs. Manoj Kumar Yadav*", passed by learned JMFC-01, South District, Saket Court, New Delhi, whereby, the application filed by the petitioner for the release of vehicle bearing registration No. 22BH 2233 A, Wagon R on superdari, was dismissed.

2. Shorn of all the unnecessary details, brief facts, of the case are



that on the basis of a secret information, police officials intercepted two vehicles, one being ‘Wagon R’ car bearing registration No. 22BH 2233 A and another ‘Mahindra Bolero Pickup’ bearing registration No. DL1L-AF-0872. On checking the Bolero Pickup car, 140 carton boxes of illicit liquor were recovered. As per the prosecution version, Wagon R car was acting as a pilot vehicle for the commission of offence under Section 33 of the Delhi Excise Act. At the time of incident, Wagon R car was being driven by the petitioner.

3. Petitioner filed an application for release of Wagon R car on superdari, but the same came to be dismissed vide impugned order dated 16.08.2024. The learned Magistrate while dismissing the application observed that the vehicle in question was being used for carrying and transportation of illicit liquor and that the Court has no jurisdiction to pass an order for the release of the vehicle as the same is barred by Section 61 of the Delhi Excise Act, 2009 [“Act”]. The learned Magistrate also placed reliance on the decision of the Delhi High Court in the case of **Deepak Hooda Vs. The Excise Commissioner & Anr. AIR Online 2020 Del.1720** and the decision of the Supreme Court in the case of **State Vs. Narender, SLP (Crl.) No. 8423/2012.**

4. Learned counsel for the petitioner submits that illicit liquor was allegedly recovered from the possession of the co-accused from Mahindra Bolero Pickup and not a single bottle of illicit liquor was recovered from the possession of the present petitioner, and therefore,



Wagon R car is not liable for confiscation and bar of Section 61 of the Act shall not apply in the present case. He further submits that as per the status report filed by the learned trial court, police has no objection if the vehicle be released on superdari. The learned counsel places reliance on the case of **Munavarbhai Dadabhai Sandhi Vs. State of Gujarat (Special Criminal Application No. 4996/2018) & Sundarbhai Ambalal Desai Vs. State of Gujarat AIR 2003 SC 638.**

5. *Per contra*, learned Additional PP, appearing for the respondent/State, submits that even though the vehicle of the petitioner was not carrying any liquor, it was the pilot car of the offending vehicle which was carrying the liquor, and therefore, it is a case of criminal conspiracy and both the vehicles would be liable to confiscation under the provisions of the Excise Act, as if both were being used for transportation of the liquor.

6. Before dealing with rival submissions, it would be apposite to refer to the relevant provisions of the Excise Act. Section 33 of the Act provides for penalty for unlawful import, export, transport, manufacture, possession, sale etc. Section 33 (a) of the Act is set out below:-

“33. Penalty for unlawful import, export, transport, manufacture, possession, sale, etc.- (1) Whoever, in contravention of provision of this Act or of any rule or order made or notification issued or of any licence, permit or pass, granted under this Act-

(a) manufactures, imports, exports, transports or removes any intoxicant;



xxx xxx xxx shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to one lakh rupees." Section 58 of the Act provides for confiscation of certain things and Section 58(d) thereof."

7. Section 58 of the Act provides for confiscation of specified things, which are liable to confiscation. Section 58 (d) of the Act, reads as follows:-

"58. Certain things liable to confiscation. - Whenever an offence has been committed, which is punishable under this Act, following things shall be liable to confiscation, namely-

xxx xxx xxx

(d) any animal, vehicle, vessel, or other conveyance used for carrying the same." From a plain reading of Section 33(a) of the Act, it is evident that transportation of any intoxicant in contravention of the provisions of the Act or of any rule or order made or notification issued or any licence, permit or pass, is punishable and any vehicle used for carrying the same, is liable for confiscation under Section 58(d) of the Act. Section 59 of the Act deals with the power of confiscation of Deputy Commissioner in certain cases. Section 59(1) thereof provides that notwithstanding anything contained in any other law where anything liable for confiscation under Section 58 is seized or detained, the officer seizing and detaining such thing shall produce the same before the Deputy Commissioner. On production of the seized property, the Deputy Commissioner, if satisfied that the offence under the Act has been committed, may order confiscation of such property. Therefore, under the scheme of the Act any vehicle used for carrying the intoxicant is liable to be confiscated and on seizure of the vehicle transporting the intoxicant, the same is required to be produced before the Deputy Commissioner, who in turn has been conferred with the power of its confiscation."

8. Section 61 of the Act places embargo of jurisdiction of the Courts and the same reads as under:-



“61. Bar of jurisdiction in confiscation.- Whenever any intoxicant, material, still, utensil, implement, apparatus or any receptacle, package, vessel, animal, cart, or other conveyance used in committing any offence, is seized or detained under this Act, no court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, have jurisdiction to make any order with regard to such property.” According to this section, notwithstanding anything contrary contained in any other law for the time being in force, no court shall have jurisdiction to make any order with regard to the property used in committing any offence and seized under the Act.”

9. It is apparent from the plain reading of the aforesaid relevant Sections that vehicle used for transportation of any intoxicant, material, still, utensil, implement and apparatus shall be detained and no Court shall have jurisdiction to pass an order with regard to such vehicle.

10. Admittedly, the recovery was made from Mahindra Bolero Pickup car and not from the Wagon R car, which was merely being used as a pilot vehicle. Therefore, that being so, the embargo placed on the jurisdiction of the Court by Section 61 of the Act, shall not apply in the present case. The reliance placed on the judgments of **Deepak Hooda** (*supra*) and **State Vs. Narender** (*supra*) in the impugned order are not applicable to the facts of the present case. In those cases, the vehicles were being used for the commission of the offence.

11. In view of the aforesaid, the impugned order dated 16.08.2024, passed by the learned JMFC, cannot be sustained and is set aside with directions to the trial court to pass requisite orders for the release of



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the vehicle i.e. Wagon R car bearing registration No. 22BH2233A, on Superdari as per law.

RAVINDER DUDEJA, J.

APRIL 24, 2025

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