

(2020) 10 P&H CK 0037

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous Petition (M) No. 22871 Of 2020

Satpal

APPELLANT

Vs

State Of Haryana

RESPONDENT

Date of Decision : 08-10-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 173, 451, 452, 482
Punjab Excise Act, 1914 — Section 3(15), 61, 61(1)(aaa), 72, 72F, 78, 81
Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 51

Citation : (2020) 10 P&H CK 0037

Hon'ble Judges : G.S. Sandhawalia, J

Bench : Single Bench

Advocate : Ramnish Puri, Anant Kataria

Final Decision : Allowed

Judgement

G.S. Sandhawalia , J

In the present petition filed under Section 482 Cr.P.C., the petitioner challenges the orders dated 16.06.2020 (Annexure P-3) passed by the Judicial Magistrate 1st Class, Sonapat and 23.07.2020 (Annexure P-5) passed by the Additional Sessions Judge, Sonapat, whereby the order passed by the JMJC dismissing the application for releasing the country made liquor and the vehicle during the pendency of the case, was upheld. The same was on the ground that Section 72F of the Punjab Excise Act, 1914 (as applicable to Haryana) (for short 'the Act') prohibited the release of liquor and vehicle seized in a major offence.

Arguments:

Counsel for the petitioner, thus, has argued that the said orders are not sustainable, on account of the fact that the petitioner was the owner of the vehicle No.HR10Z-6051, which was carrying 40 cases of country made liquor 'FALCON SANTRA'. The petitioner-applicant was a liquor contractor and running vends in Sonapat and the police had wrongly impounded the vehicle alongwith

the said liquor. He was authorized legally to carry the same and there was no irregularity on the part of the applicant. Reliance has been placed upon the judgment of the Apex Court passed in 'Sunderbhai Ambalal Desai Vs. State of Gujarat' AIR (2003) SC 638, to submit that the provisions of Section 451 Cr.P.C., would be applicable and since the Code of Criminal Procedure (for short 'Cr.P.C.') was applicable for the cases pending under the Act, therefore, power of the Magistrate could not be curtailed.

It is further submitted that the confiscation order had not been passed of the article under Section 78 of the Act which could be ordered by the Magistrate, only at the fag end of the trial. After following the procedure prescribed an opportunity had to be given as such to the owner and keeping the said articles and the vehicle in the custody of the police would only put the same to disuse and adversely affect the value of the same.

Counsel for the State on the other hand has defended the orders on the ground that the Act itself provides a bar as such, whereby the intoxicants or other materials seized, which involved in a major offence under the Act could not be released, but has to be disposed in the manner prescribed. He, accordingly, submitted that under Section 3 (15) of the Act as amended on 31.03.2020, the major offence has been described, which included the transport and sale of non-duty paid liquor. It was, resultantly, submitted that it has been noticed by the Revisional Court that the Excise Department had submitted its report that the place of recovery was different from the route permit on the aforesaid permit and the liquor was seized at 4:15 PM on 13.06.2020 and the pass bearing No.PS203103079162 had been issued at 4:34 PM and, therefore, the transport of the said liquor was unlawful.

Facts:

It is not disputed that FIR No.237 dated 13.06.2020 under Section 61 of the Act, was lodged at Police Station Civil Lines, Sonapat (Annexure P-1) by the police party on secret information that a Mahindra KUV-100 vehicle bearing No.HR10Z-6051 was coming towards Double Storey from IT Chowk. The said vehicle was stopped and the Driver Raju son of Rajendra as such was asked his name. Upon inquiry he revealed that he was carrying 40 boxes of liquor, sample of which was taken and seized alongwith the vehicle, since an offence was alleged to have been committed under Section 61 of the Act for not having licence. Resultantly, the application was filed for releasing the country liquor alongwith the vehicle on Sapurdari.

Counsel for the petitioner has relied upon the partnership deed dated 01.04.2020 (Annexure P-7) to show that the petitioner-applicant as such was a partner to the extent of 5% in M/s Vinod Kumar & Company, which was trading in retail liquor of Indian made liquor/country liquor and foreign made liquor. It is, accordingly, submitted that the liquor was being transported to the licenced premises of L-14A of the said partnership concern at the Bus Stand Sonapat and

the authorization had been done by AETO/DETC, Sonapat. Resultantly, pass bearing No.PS203103079162 and permit bearing No.PN203176065457 had been issued (Annexure P-6) and the vehicle number had also been specified in the same alongwith the driver's name Raju alongwith his mobile number. It is submitted that in such circumstances, there was no such major offence committed and the provision of Section 72F would not stand in the way of the petitioner.

Section 72F reads as under:-

"72F. Certain things liable to be seized.- Where intoxicant, apparatus, vehicle or other material is seized, involved in any major offence under this Act, the same shall not be released but shall be disposed of in such manner, as may be prescribed."

As per the reply filed by way of affidavit of Shri Virender Singh, HPS, Deputy Superintendent of Police, Head Quarter, Sonapat, it has been submitted that the final report under Section 173 Cr.P.C., was filed in the Court of ACJM, Sonapat, against accused Raju on 09.07.2020 on the completion of investigation. The stand of the State was that the liquor was not recovered from the proper route as the destination of the licence premises was at Bus Stand Sonapat and the detection was at a different place.

Admittedly, the proceeding are pending before the Court and the petitioner is not an accused in the said proceedings. Section 61 provides that wherever there is any contravention of the Act or any rule, notification issued or any order passed or of any licence, permit or pass granted, the punishment may go upto 3 years.

Section 72 further provides that all offences punishable under the Act with imprisonment two years or more shall be non-bailable and cognizable and the provisions of Cr.P.C., 1973 shall be applied. The said section reads as under:-

"72. Certain offences to be non-bailable.- All offences punishable under this Act imprisonment with two years or more, shall be non-bailable and cognizable and the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) with respect to non-bailable and cognizable offences, shall apply to those offences.

Thus, it is not disputed that provisions of Cr.P.C., are applicable and the provisions under Section 451 Cr.P.C., which provides custody and disposal of the property pending trial in certain cases would come into play and the procedure prescribed for releasing the goods seized by the police. Section 78 of the Act further provides that the article for which the offence had been committed shall be liable for confiscation and the same may be ordered. The proviso provides that the excise bottle and the vehicle if not being the property of the offenders shall not be liable to confiscation if the owner establishes that he exercised due diligence to make sure that such offence was not committed. The said section reads as under:-

"78. Confiscation of article in respect of which offence committed.- (1) Whenever

an offence punishable under this Act has been committed:

(a) every (intoxicant) (or excise bottle) in respect of which such offence has been committed (together with the contents of such bottle, if any;

(b) every still, utensil, implement or apparatus and all material in respect of or by means of which such, offence has been committed;

(c) every intoxicant or excise bottle lawfully imported transported, manufactured had in possession or sold along with, or in addition to any intoxicant or excise bottle liable to confiscation under clause (a);

(d) every receptacle, package and covering in which any intoxicant or excise bottle, materials, still, utensil, implement or apparatus as aforesaid is or are found together with the other contents (if any) of such receptacle or package; and

(e) every animal, cart, vehicle, vessel, raft or other conveyance except public undertaking vehicles used in carrying such, receptacle, or package, covering or articles as aforesaid shall be liable to confiscation.

Provided that when it is proved that the receptacles, vehicles, animals or other articles specified in clauses (d) and

(e) except public undertaking vehicles are not the property of offenders, they shall not be liable to confiscation if the owner thereof establishes that he exercised due diligence to make sure that such offence was not committed.

(2) When confiscation may be ordered. - When in the trial of any offence punishable under this Act the Magistrate decides that anything is liable to confiscation under sub-section (1), he may order confiscation;

Provided that in lieu of ordering confiscation he may give the owner of the thing liable to be confiscated an option to pay such fine as the Magistrate thinks fit.

(3) When an offence under clause (aaa) of sub-section (1) of section 61 is committed under this Act and the Collector decides that anything is liable to confiscation under sub-section (1), he may order the confiscation.

Provided that in lieu of ordering confiscation under clause (e) of sub-section (1) the Collector may give the owner of the thing liable to be confiscated and option to pay such penalty as the Collector imposes under section 61 of this Act.]"

Similarly, Section 81 provides that the offences punishable upto a maximum period of two years shall be tried summarily by the Court under the Cr.P.C. The said section reads as under:-

"81. Summary Trial.- All offences punishable under this Act upto a maximum period of two years, shall be tried summarily, under the Code of Criminal Procedure, 1973.

Thus, it is apparent that the confiscation has to be done at the subsequent stage after giving the opportunity to the owner to pay fine also under sub-clause 2.

The Apex Court in *Sunderbhai Ambalal Desai (supra)* while dealing with the issue of liquor seized by the police and kept at police station, referred to the provisions of Section 451 and held that the power should be exercised promptly and articles are not to be kept for a long time at the police station and there is no use to keep these articles in the police station till the trial is over. Special reference was also made to vehicles which were seized to hold that they would be unattended and become junk day by day and should be released to its owner or to the person from whom the said vehicles were seized by taking appropriate bond and the guarantee for the return of the said vehicles if required by the Court at any point of time. Similarly, for liquor it was held that prompt action should be taken in disposing it off after preparing necessary PANCHNAMA and large quantity of liquor should not be stored at the police station. Relevant portion of the said judgment reads as under:-

"15. Learned senior counsel Mr. Dholakia, appearing for the State of Gujarat further submitted that at present in the police station premises, number of vehicles are kept unattended and vehicles become junk day by day. It is his contention that appropriate directions should be given to the Magistrates who are dealing with such questions to hand over such vehicles to its owner or to the person from whom the said vehicles are seized by taking appropriate bond and the guarantee for the return of the said vehicles if required by the Court at any point of time.

16. However, the learned counsel appearing for the petitioners submitted that this question of handing over vehicles to the person from whom it is seized or to its true owner is always a matter of litigation and a lot of arguments are advanced by the concerned persons.

17. In our view, whatever be the situation, it is of no use to keep such-seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles.

18. In case where the vehicle is not claimed by the accused, owner, or the insurance company or by third person, then such vehicle may be ordered to be auctioned by the Court. If the said vehicle is insured with the insurance company then insurance company be informed by the Court to take possession of the vehicle which is not claimed by the owner or a third person. If Insurance company fails to take possession, the vehicles may be sold as per the direction of the Court. The Court would pass such order within a period of six months from the date of production of the said vehicle before the Court. In any case, before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchnama should be prepared.

19. For articles such as seized liquor also, prompt action should be taken in disposing it of after preparing necessary panchnama. If sample is required to be taken, sample may kept properly after sending it to the chemical analyser, if required. But in no case, large quantity of liquor should be stored at the police station. No purpose is served by such storing.

20. Similarly for the Narcotic drugs also, for its identification, procedure under Section 451 Cr.P.C. should be followed of recording evidence and disposal. Its identity could be on the basis of evidence recorded by the Magistrate. Samples also should be sent immediately to the Chemical Analyser so that subsequently, a contention may not be raised that the article which was seized was not the same.

21. However these powers are to be exercised by the concerned Magistrate. We hope and trust that the concerned Magistrate would take immediate action for seeing that powers under Section 451 Cr.P.C. are properly and promptly exercised and articles are not kept for a long time at the police station, in any case, for not more than fifteen days to one month. This object can also be achieved if there is proper supervision by the Registry of the concerned High Court in seeing that the rules framed by the High Court with regard to such articles are implemented properly.

Adjourned for three weeks. Order accordingly."

Similarly, the Division Bench of this Court in 'Gurbinder Singh @ Shinder Vs. State of Punjab', 2016 (4) RCR (Criminal) 492 answered the reference in favour of the owners of the vehicles, which were to be released during the pendency of the trial. The view that the vehicle could not be released under NDPS Act on Sapurdari was set aside, while keeping in mind the provisions of Sections 451, 452 and 457 of Cr.P.C. It was also held that there was no such bar, once the provisions of Cr.P.C., are applicable. The Division Bench thus noticed that the independent decision on the confiscation has to be taken and nobody can be benefited out of the idle parking of the vehicle unattended in the premises of the police station. Relevant portion of the said judgment reads as under:-

"11. The question that arises for determination is whether Section 451 Cr.P.C. can be applied while considering the plea for interim custody of the vehicle seized under the NDPS Act. Section 51 of the NDPS Act which has a bearing on this issue reads as follows:-

"51. Provisions of the code of Criminal Procedure, 1973 to apply to warrants, arrests, searches and Seizures. The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply, in so far they are not inconsistent with the provisions of this Act, to all warrants issued and arrests, searches and seizures made under this Act."

As regards the seizure of any article or thing, the provisions of Cr.P.C. shall apply if it is not inconsistent with the provisions of NDPS Act.

12. On a thorough perusal of the various provisions under the NDPS Act, we find that there is no specific provision debarring the release of the vehicle seized under the Act. When the provision under Section 451 Cr.P.C. is not inconsistent with any specific provision under NDPS Act, the same will have to be applied as mandated under Section 51 of the said Act.

13. A vehicle used for committing rape and murder is being released in the garb of Section 451 Cr.P.C. as interpreted by the Hon'ble Supreme Court in Sunderbhai Ambalal Desai's case (supra). When the vehicles seized in such heinous crimes are released for interim custody, there is no logic in denying interim custody of the vehicle seized under the NDPS Act.

Neither the State nor the owner of the vehicle is going to be benefited if the vehicle in the premises of the police station occupies a larger space posing inconvenience to the Police Department. Further, it is an open secret that when a vehicle is parked unattended, the valuable parts of the vehicle are casually taken away or stolen. Finally, when the Court comes to a conclusion that the vehicle was used for committing the crime, the vehicle which was kept in the open would have substantially deteriorated. Likewise, if the Courts take a final decision that the vehicle For Subsequent orders see CRM-23019-2016 8 of 14 was not at all used for commission of the crime or the vehicle was used without the knowledge of the owner thereof, the owner will have to collect only the scrap of the vehicle. In other words, nobody is going to be benefited out of idle parking of vehicle totally unattended in the premises of the police station.

xxxxxxxxxxxxxxxxxxxxxxxxxx

15. A conveyance seized under the NDPS Act shall be liable to confiscation only when the owner of the conveyance who was given an For Subsequent orders see CRM-23019-2016 10 of 14 opportunity by the Court could not prove that the conveyance was used without his knowledge or connivance. The Court will have to decide whether a vehicle seized under the NDPS Act is liable to confiscation only on conclusion of trial. The trial Court has to take independent decision on the question of confiscation irrespective of the conviction or acquittal or discharge recorded by it. But, at any rate, the trial Court is not supposed to pass any order of confiscation before expiry of one month from the date of seizure or without affording opportunity to the claimant.

16. On a perusal of the above provisions under the NDPS Act, we find that the trial Court has to take a decision as to whether a vehicle is liable to confiscation only on conclusion of the trial. A vehicle seized under the NDPS Act cannot be kept idle to the disadvantage of everyone concerned till the order of confiscation is passed on conclusion of trial."

Counsel for the State as such could not point out any regulations the State had framed providing that the vehicle or the liquor has to be disposed in the manner as prescribed under Section 72F of the Act. It would be clear from Sections 72 and 81 that the provisions of Cr.P.C. would come into play, whereas for major

offences it would not be a summary trial.

Thus, this Court is of the opinion that no useful purpose will be served as such to keep the 40 boxes of liquor stored in the police station alongwith the vehicle Mahindra KUV 100 during the pendency of the trial of the FIR. Resultantly, it can be safely held that the Courts below have failed to exercise the jurisdiction vested in them under the law while dismissing the application for release of the vehicle and liquor on Sapurdari.

Accordingly, the orders dated 16.06.2020 (Annexure P-3) and 23.07.2020 (Annexure P-5) as such are set aside by allowing the present petition and the application which has been filed. The release be ordered in the usual terms by the Trial Court.

The petition stands allowed in the above terms.