

Before Sureshwar Thakur, J.

ATEEK AHMED—Petitioner

versus

THE STATE OF HARYANA—Respondent

CRM-M No. 50865 of 2021

December 10, 2021

Code of Criminal Procedure, 1973—S.451—Prevention of Cruelty to Animals Act, 1960—S.11—Haryana Gauvansh Sanrakshan and Gausamvardhan Act, 2015—S.13 and 17—Punjab Prohibition of Cow Slaughter Act, 1955—S.4-B/8—Release of an offending vehicle on Superdari—Held, the Court which has made confiscation order has no jurisdiction to make an order with respect to release of the said confiscated vehicle—The petitioner should first appeal before the District Magistrate to get the confiscation order annulled and further make a prayer for release of the offending vehicle.

Held, that since it is open to the petitioner, to challenge the confiscation order, through his casting an appeal before the District Magistrate concerned, thereupon, it is permissible for the petitioner to recourse the afore statutory remedy before the District Magistrate concerned.

(Para 8)

Dhruv Gupta, Advocate
for the petitioner.

Pradeep Prakash Chahar,
Deputy Advocate General, Haryana.

SURESHWAR THAKUR, J. (ORAL)

(1) An FIR No. 177 of 11.10.2019 became registered with Police Station Shahzadpur, District Ambala, constituting therein offences under Sections 13(1) / 13(2) of the Haryana Gauvansh Sanrakshan, and, Gausamvardhan Act, 2015, and, under Section 11 of the Prevention of Cruelty to Animals Act, 1960, and, besides under Section(s) 4-B/8, of the Punjab Prohibition of Cow Slaughter Act, 1955. The petitioner is named as an accused. He is the owner of vehicle No. RJ01-GA-2780, whereins, cattle were illegally transported.

(2) The owner of the vehicle, moved an application before the learned Magistrate concerned, and, through the afore application, instituted under Section 451 of Cr.P.C., the petitioner herein, strived to obtain release of the offending vehicle concerned, hence on superdari. The learned Magistrate concerned, made a disaffirmative order on the afore application. The order (supra), as made by the learned JMIC concerned, on 16.08.2021, is challenged before this Court, by the petitioner herein.

(3) The learned counsel for the petitioner has contended, that the learned Magistrate concerned, has not exercised the jurisdiction vested in her under Section 451 of Cr.P.C., hence he contends that the impugned order is vitiated.

(4) However, for determining the validity of the afore made submission before this Court, it is deemed fit, to peruse with circumspection, and, to analyze, the import of Section 17 of the Haryana Gauvansh Sanrakshan, and, Gausamvardhan Act, 2015, provisions whereof extracted hereinafter:-

“17. Confiscation of Vehicles.

(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 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.”

(5) A reading of the conspicuous, and, germane to the instant lis, hereabove underlined provisions, carried sub-Sections (2), (3) & (5) of the afore Section 17, as become above extracted, make it abundantly clear, that whenever any offending vehicle concerned, is seized in connection with commission of offences punishable under the Act (supra), thereupon, a report about the same, without unreasonable delay, shall be made by the person seizing it, to the competent authority, and, thereafter, the competent authority, irrespective of the fact, that the prosecution is instituted against the offender concerned for commission of offence (supra), it may subject to his jurisdiction over the area, where the vehicle was seized, and, also his making an objection satisfaction, that the vehicle was used for commission of offences, as embodied in the Act (supra), shall proceed to draw proceedings for confiscation of the offending vehicle concerned. However, prior to the afore confiscation being it, is made incumbent upon the authority concerned, to provide an opportunity of hearing

to the owner, of the offending vehicle.

(6) Furthermore, a reading of afore sub-Section (3) of Section 17 of the Act (supra), reveals, that upon termination of confiscation proceedings, and, wherethrough an order of confiscation is made by the competent authority concerned, thereupon, there is a complete ouster of jurisdiction, vis-a-vis, any Court of law, in its causing, to make any order, with respect to release of the offending vehicle concerned. The afore statutory bar against any Court of law, or any authority, other than the competent authorities contemplated, within the ambit of Section 17, rather exercising jurisdiction upon an apposite application, seeking release of the offending vehicle concerned, does also completely, oust the jurisdiction of the learned Judicial Magistrate concerned, to invoke Section 451 Cr.P.C., rather for causing valid delivery or the valid release of the offending vehicle, hence on superdari to the owner concerned. Therefore, the afore made submission before this Court, by the learned counsel, for the petitioner, is rejected.

(7) Even otherwise without the confiscation order being annulled, and, when in respect whereof, the petitioner holds a remedy to make an appeal thereagainst, before the District Magistrate concerned, and, also when before the latter, the relief of release of the vehicle concerned, can also be claimed. Therefore, the afore relief may also be claimed in the afore drawn proceedings before the District Collector concerned.

(8) Be that as it may, since it is open to the petitioner, to challenge the confiscation order, through his casting an appeal before the District Magistrate concerned, thereupon, it is permissible for the petitioner to recourse the afore statutory remedy before the District Magistrate concerned. In case there is any delay in the petitioner recouring the apposite statutory remedy before the learned Magistrate concerned, it may become condoned, rather within the ambit of Section 14 of the Limitation Act, by the District Magistrate concerned. He is also directed to decide the appeal, within two months from the date of institution thereof by the petitioner.

(9) Disposed of.

Payel Mehta