



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Civil Writ Petition No. 1149/2016

CNR: RJHC020599712016 | URN: CW / 2048U / 2016

Rajendra Singh S. Bhatia S/o Shri Somsingh Bhatiya, 138/B,
Sorabji Compound, Juna Vadaj, Naranpura, Ahmedabad-380013
Gujarat.

-----Petitioner

Versus

1. Excise Commissioner, Rajasthan, Excise Building, 2-
Gumaniyawal, Panchwati, Udaipur.
2. District Excise Officer, Ajmer.
3. Superintendent of Police, Ajmer.
4. Station House Officer, Police Station Adarsh Nagar, Ajmer.

-----Respondents

For Petitioner(s) : Mr. Hari Kishan Saini
For Respondent(s) : Mr. Kapil Prakash Mathur, AAG with
Mr. Saurabh Sharma &
Mr. Tanmay Sharma
Mr. Akash Gaur, Dy. G.C.

HON'BLE MR. JUSTICE ANAND SHARMA

Judgment

REPORTABLE

06/10/2026

1. By way of filing the instant writ petition, the petitioner has challenged order dated 30.06.2015 passed by the Excise Commissioner, Rajasthan, Udaipur, whereby while confiscating his vehicle, penalty of Rs.10 lakhs was imposed. He is also aggrieved by non-refunding the sale proceeds received after auctioning the said vehicle to the petitioner and his request was turned down vide letter dated 17.11.2015.



2. It is stated that the petitioner is a resident of State of Gujarat and is carrying on business of tours and travels in the name and style of 'Shri Durga Travels'. He purchased one mini bus of Force Motor Company after availing loan from Vijaya Bank amounting to Rs.10 lakhs. After purchasing the said vehicle, it was registered by the Transport Authority as GJ-01-DV-6823.

3. It is further stated that on 05.11.2014, when the vehicle was parked at a proper place and was also duly locked, it was not found at the same place on the morning of 06.11.2014. Despite a meticulous search made by the petitioner, he could not locate the vehicle, and accordingly lodged FIR No.336/2014 on 13.11.2014 at Police Station-Naranpura, District-Ahmedabad, which was registered for offence under Sections 279 & 379 IPC. Thereafter, the police authorities initiated investigation pursuant to aforesaid FIR.

4. The aforesaid vehicle owned by the petitioner was found by a patrolling police party on 25.11.2014, loaded with liquor at N.H.-8 near Suresh Dhaba towards Badgaon Road. The vehicle was being driven by Laduram S/o Heera Lal. It was seized by the Police Station-Adarsh Nagar, Ajmer, and the driver was also arrested. Police also registered a criminal case vide FIR No.328/2014 for offence under Section 19/54 of the Rajasthan Excise Act, 1950, read with Section 279 IPC.

5. It is further stated that when the stolen vehicle was found and recovered by the Police Station-Adarsh Nagar, Ajmer along with accused, hence, upon receiving such information, the Additional Chief Metropolitan No.9, Ahmedabad, passed an order dated 28.11.2014 and issued a transfer warrant, requesting



Additional Senior Civil Judge No.2, Ajmer, for producing accused-Laduram along with vehicle before him. Accordingly, authority letter was issued to the police officials directing for custody of the accused and his production along with seized vehicle. The concerned police officials submitted an application dated 29.11.2014 before Additional Chief Judicial Magistrate No.2, Ajmer, for custody of the accused and production of seized vehicle pursuant to transfer warrant issued by the Competent Court at Ahmedabad.

6. It is also contended that upon such application, although custody of the accused was handed over to the police officials of State of Gujarat, yet no order whatsoever was passed with regard to handing over possession of vehicle seized by the police.

7. It is further stated that under these circumstances, the petitioner being registered owner of the vehicle, which was seized under the provisions of the Rajasthan Excise Act, 1950 (for short, 'the Act of 1950'), submitted an application before the Excise Commissioner, Rajasthan, Udaipur on 11.02.2015 mentioning therein that he was registered owner of the vehicle, and since the vehicle was stolen by the accused, the incident of theft was reported to the concerned police station by way of lodging FIR No.336/2014. Since, the vehicle has been seized by the police, therefore, it was prayed that it should be released to the petitioner, who is registered owner of the vehicle.

8. Thereupon, a notice dated 26.03.2015 was issued by the Office of Excise Commissioner requiring the petitioner to appear for personal hearing on 17.04.2015. During personal



hearing, the petitioner produced all the relevant documents so as to demonstrate that the petitioner was registered owner of the vehicle and the same was since stolen, an FIR was lodged by him to show that he was vigilant about the vehicle.

9. The application under Section 69(4) of the Act of 1950 filed by the petitioner was dismissed and the vehicle was confiscated vide order dated 30.06.2015 and a penalty of Rs.10 lakhs was imposed upon the petitioner, failing which the vehicle was directed to be auctioned in accordance with the provisions of the Act of 1950. It was also mentioned in order dated 30.06.2015 that the order passed by the Excise Commissioner could be challenged by the petitioner under Section 9-A of the Act of 1950 before the Rajasthan Tax Board, Ajmer.

10. It is stated that limitation period for filing an appeal under Section 9-A of the Act of 1950 is 60 days from the date of receiving the order, however, in the instant case, much before expiry of limitation period of 60 days from the date of passing of order dated 30.06.2015, in quite arbitrary manner, the respondents auctioned the above vehicle on 19.08.2015 for a consideration of Rs.8,03,000/-. The petitioner also contended that he had also submitted an application in the Office of Excise Commissioner for releasing the sale proceeds received by the respondents from the auction of the vehicle. However, the said application has been rejected vide letter/order dated 17.11.2015 with the observations that copy of acquitting the petitioner to criminal charges by the Competent Criminal Court had not been produced, therefore, petitioner was directed to produce copy of



judgment of acquittal in criminal case. Hence, the petitioner approached this Court by way of filing the instant writ petition.

11. The instant writ petition was opposed by the respondents by filing reply in which at the outset an objection with regard to availability of alternative remedy before the Rajasthan Tax Board was raised, and was submitted that without availing the alternative remedy, the writ petition filed by the petitioner is not maintainable. It was also objected that since, in auction the vehicle has been purchased by one Shree Chandra Prakash Arora, who has not been impleaded as party to the writ petition, therefore, on account of non-joinder, the petition is not maintainable. On merits, it was submitted by the respondents that the said vehicle was intercepted and checked by the Police Station-Adarsh Nagar and during such proceedings, 62 cartoons of liquor were found in the said vehicle, thereupon a criminal case under Section 19/54 of the Act of 1950 was registered. It is submitted that application filed by the petitioner for releasing the vehicle was duly considered by the Excise Commissioner and due opportunity of hearing was granted to him. After appreciating the entire facts, the Commissioner had rightly confiscated the vehicle and imposed penalty of Rs.10 lakhs upon the petitioner failing which the vehicle was directed to be auctioned, and since the petitioner did not deposit the penalty amount, hence, the vehicle was auctioned on 19.08.2015. As per the respondents, there is no illegality or infirmity in the action of the respondents and the writ petition filed by the petitioner deserves to be dismissed.

12. Shri Hari Kishan Saini, learned counsel for the petitioner submitted that the action of the respondents is totally





arbitrary and illegal and in contravention of the provisions of the Act of 1950. Respondents have illegally confiscated and auctioned the valuable vehicle of the petitioner in quite whimsical manner, so as to cause grave financial loss to the petitioner, who is a bona fide registered owner of the vehicle and was not at all involved in any of the crime.

13. *Per contra*, Shri Kapil Prakash Mathur, learned Additional Advocate General appearing for the State opposed the writ petition by repeating the contents of reply to the writ petition and submitted that the action taken by the respondents is inconsonance with the procedure contemplated under the Act of 1950. Since the vehicle-in-question was admittedly involved in a serious crime under Section 19/54 of the Act of 1950, hence, by applying mandatory provisions of law, it has rightly been confiscated and auctioned by the respondents. Petitioner is not entitled for relief sought by him.

14. Heard learned counsel for the parties and perused the record.

15. The facts are undisputed to the extent that the petitioner is a registered owner of the vehicle and upon the vehicle being stolen, the petitioner also lodged an FIR on 13.11.2014. It is also not in dispute that although the vehicle was seized by the police authorities along with liquor on 25.11.2014, yet only the driver of the vehicle, who was driving the vehicle at the relevant time was implicated as an accused and at no point of time, the petitioner was treated as an accused in the criminal case lodged by the police authorities under Section 19/54 of the Act of 1950.



16. It is also an undisputed fact that there are no criminal antecedents of the petitioner and there is no other complaint against him for violation of provisions of the Act of 1950.

17. When the vehicle of the petitioner was seized, he filed an application under Section 69(4) of the Act of 1950 along with all the necessary documents demonstrating that the petitioner is registered owner of the vehicle and even the copy of FIR dated 13.11.2014 lodged by the petitioner in the State of Gujarat along with all of the documents reflecting proceedings of the Competent Criminal Court pursuant to said FIR were also submitted before the Excise Commissioner, Rajasthan.

18. While considering the application submitted by the petitioner, the Excise Commissioner has given a finding that the petitioner could not establish that he took all the precautions to prevent the vehicle from being used in illegal activities. Since, the vehicle is found to be involved in carrying illegal liquor, therefore, the petitioner is responsible for that. In order to examine the correctness of the findings given by the Excise Commissioner, this Court took into consideration the relevant provisions of Section 69(4) of the Act of 1950 and found that proviso to Section 69(4) of the Act of 1950 makes it clear that while deciding the application for release of vehicle or before ordering its confiscation, a reasonable opportunity of being heard shall be afforded to the registered owner. In case, the registered owner is able to satisfy the Excise Commissioner that he had no reason to believe that such offence was being or likely to be committed and he had exercised due care to prevent the commission of such



offence, the Excise Commissioner, Rajasthan, shall not confiscate the vehicle and would release the same.

19. In the light of facts and circumstances of the case, where it is not disputed that the petitioner being registered owner, when he found that a vehicle had been stolen on 05.11.2014, FIR was lodged by him on 13.11.2014. Such action by the petitioner in lodging FIR and the investigation carried out by the authorities pursuant to FIR would make it clear that the petitioner took due care with regard to his vehicle and had no reason to believe that the offence was committed, or likely to be committed through that vehicle and an ordinary citizen is expected to take similar steps whenever he finds that his vehicle has been stolen by unknown person. Under these circumstances and more particularly where the petitioner was not implicated as an accused in the offence registered by the police authorities under Section 19/54 of the Act of 1950, no justified reason has come forward for denying the release of vehicle in favour of the petitioner treating him to be bona fide and innocent person. Merely because a case under Section 19/54 of the Act of 1950 has been registered by the police authorities, and a vehicle has been seized, it would not mean that in all cases, the Excise Commissioner is bound to confiscate the vehicle. Provisions contained in proviso to Section 69(4) of the Act of 1950 assumes greater significance, and whenever a bona fide registered owner is able to show that he was not having any control over his vehicle in the circumstances like the present one, and due care has also been taken by him for preventing any further crime by way of lodging FIR in relation to such vehicle, the Excise Commissioner is under a legal obligation not to confiscate





the vehicle and to release the same to the registered owner after securing the bonds/undertaking so as to bind the registered owner to produce the vehicle as and when required in legal proceedings.

20. There is yet another significant aspect of the matter. In confiscation order dated 30.06.2015, the Excise Commissioner himself recorded that order passed by him is appealable before the Rajasthan Tax Board, Ajmer, under Section 9-A of the Act of 1950. It has also not been disputed that limitation period for filing appeal before the Rajasthan Tax Board, Ajmer, is 60 days. Under these circumstances, Excise Commissioner and the respondents-Authorities were bound to wait for aforesaid limitation period of 60 days to expire, before proceeding to auction the vehicle.

21. However, in the present case, without waiting for 60 days limitation period from the date of confiscation order dated 30.06.2015, in quite arbitrary and hurried manner, the vehicle was auctioned by the respondents on 19.08.2015, whereas 60 days period was going to expire on 29.08.2015. No justification whatsoever has been given by the learned Additional Advocate General to explain or sustain such wholly arbitrary action on the part of the respondents.

22. Even, thereafter, the request made by the learned counsel for the petitioner to at least release the sale proceeds of vehicle to him was also rejected by raising a totally unjustified ground that the petitioner had not been acquitted by the competent Criminal Court and copy of acquittal order was demanded from him. When petitioner was never implicated in any of the criminal case, demand of judgment of acquittal from him is totally inconceivable.

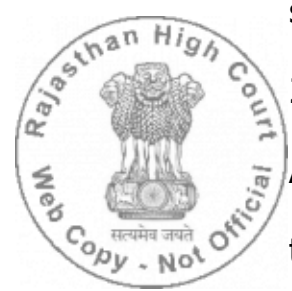




23. Under the aforesaid circumstances, this Court is also of the considered view that imposition of penalty of Rs.10 lakhs upon the petitioner vide order dated 30.06.2015 is unjustified and is not sustainable in the eye of law.

24. The preliminary objection raised by the learned Additional Advocate General is that the petitioner has not availed the remedy of statutory appeal before the Rajasthan Tax Board, Ajmer, and suffice is to observe that in the peculiar circumstances of the case, where before expiry of prescribed limitation period, the vehicle-in-question was arbitrarily auctioned by the respondents, the petitioner was not required to avail remedy of appeal just to undergo an empty ritual. Rule of alternative remedy is not an inflexible rule but is a rule of inconvenience. The extraordinary jurisdiction of this Court cannot be declined on the ground of an alternative remedy, where, in the facts and circumstances of this case, such remedy has been rendered wholly illusory and inefficacious by the very action of the respondents.

25. In view of above this Court finds that the petitioner is entitled for getting the sale proceeds of the vehicle to the tune of Rs.8,03,000/- as the confiscation of the vehicle in the instant case was totally illegal. So far as award of interest on aforesaid amount is concerned, learned Additional Advocate General objected that pursuant to Section 69(8) of the Act of 1950, no interest shall be payable on the amount to be paid or refunded to the owner of the vehicle. This Court thoroughly examined the provisions of Section 69(8) of the Act of 1950 and finds that such restriction with regard to not paying interest on the refunded amount is confined only to the cases, where confiscation was found to be legal and





proper. However, this bar of not awarding interest cannot be extended to such cases where on examination of the facts and law, this Court finds that the confiscation was totally arbitrary and illegal and has been quashed by this Court. In the considered view of this Court, the petitioner was illegally deprived of his legitimate right to seek release of the vehicle, which was thereafter illegally auctioned by the respondents. The respondents further withheld the sole proceeds of such action from the petitioners without any lawful justification. The petitioner is, therefore, entitled to interest, which this Court assesses @ 6% per annum from the date of illegal confiscation to the actual date of refund of sale proceeds of the vehicle of the petitioner.

26. In the backdrop of this matter, it is also clear that vehicle of the petitioner was confiscated without there being any authority of law and in violation of the provisions of the Act of 1950 and thereafter it was also auctioned in quite malicious manner even before expiry of limitation period from the date of confiscation order. This Court also finds that the petitioner has been unnecessarily harassed and victimized by the respondents for no fault of his own. His vehicle was virtually snatched by the respondents-Authorities without following the due process of law and he was deprived of his legitimate rights due to malicious action taken by the respondents. Thus, the entire series of facts reveal misuse of power and authority by the respondents, hence, under these circumstances, this Court deems it fit to impose exemplary cost of Rs.2 lakhs upon the respondent-Department, which would also compensate the miseries and loss caused to the petitioner.



27. For the reasons mentioned hereinabove, the writ petition filed by the petitioner is hereby allowed. Orders dated 30.06.2015 and 17.11.2015 passed by the Excise Commissioner, Rajasthan, Udaipur and Additional Excise Commissioner (Law), Rajasthan, Udaipur are hereby quashed and set aside. Excise Commissioner, Rajasthan is directed to refund the amount of Rs.8,03,000/- being the sale proceeds of vehicle No.GJ-01-DV-6823 to the petitioner along with interest @ 6% per annum. The Excise Commissioner, Rajasthan, Udaipur, shall also pay cost of Rs.2 lakhs to the petitioner so as to compensate the loss of the petitioner arising out of undue harassment and victimization of the petitioner.

28. The respondents shall make compliance of this order within a period of 60 days from the date of passing of this order.

29. Pending application(s), if any, stand(s) disposed of.

(ANAND SHARMA),J

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