

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

S.B. Criminal Miscellaneous (Petition) No. 1534/2024

----Petitioner

Versus

State Of Rajasthan, Through P.P.

----Respondent

---

For Petitioner(s) : Mr. Vinod Kumar Sharma  
For Respondent(s) : Mr. Laxman Meena, PP

---

**HON'BLE MR. JUSTICE SUDESH BANSAL**

**Order**

**15/03/2024**

**REPORTABLE**

1. By means of this criminal miscellaneous petition filed by petitioner under Section 482 Cr.P.C., challenge has been made to the order dated 29.02.2024 passed by Metropolitan Magistrate No.8, Jaipur Metropolitan-II, dismissing petitioner's application filed under Section 457 Cr.P.C. for releasing the vehicle Bolero Jeep bearing registration No.RJ-29-UA-6692 which is seized in connection with FIR No.34/2024 registered at Police Station Bhankrota, Jaipur Metropolitan (West) for offences under Sections 19/54, 54-A Rajasthan Excise Act, 1950.

2. Counsel for the petitioner has contended that as per contents of the FIR, it is clear that the vehicle Bolero Jeep bearing registration No.RJ-29-UA-6692 was an escorting vehicle and no liquor was being transported in the Bolero Jeep, but in fact liquor

was found being transported in an another vehicle i.e. container bearing registration No. RJ-18-GB-6893.

3. Learned counsel for the petitioner has contended that petitioner is the registered owner of the vehicle Bolero Jeep, and investigation in respect of vehicle in question has been completed, the vehicle is parked at police station Bhankrota under open sky and vehicle is not required in the criminal trial, therefore, petitioner filed an application before the Judicial Magistrate under Section 457 Cr.P.C. to release the vehicle of petitioner to him on supurdginama.

4. Learned counsel for the petitioner has contended that Public Prosecutor opposed the application taking resort to provision of Section 69(4)(6) of the Rajasthan Excise Act, 1950 that where any means of conveyance referred to in clause (e) of sub-section (1) is seized in connection with commission of any offence under this Act, the Excise Commissioner or the Officer authorized in this behalf by the State Government would have jurisdiction to pass order for confiscation of the said means of conveyance as also shall have the jurisdiction to make order with regard to the possession, delivery, disposal, release of such means of conveyance.

5. Learned Public Prosecutor has emphasized on the basis of sub- section 6 of Section 69 of the Rajasthan Excise Act, 1950 that any Court, Tribunal or other Authority shall not have jurisdiction to make order for release of vehicle seized for offences under Sections 19/54, 54-A of the Rajasthan Excise Act, 1950 as conveyance in carrying receptacles or packages in contravention

of provisions of Rajasthan Excise Act, 1950. The Judicial Magistrate has no jurisdiction to release vehicle in question which has been seized for offence under Section 19/54, 54-A of Rajasthan Excise Act.

6. Learned counsel for the petitioner has contended that the Judicial Magistrate has rejected the petitioner's application vide order impugned dated 29.02.2024, but in the order it has not discussed that the seized vehicle in question was an escorting vehicle and was not used for carrying receptacles or packages, nor Judicial Magistrate has pondered over the legal issue that the embargo envisaged under sub-section 6 of Section 69 of the Rajasthan Excise Act, 1950 does not apply upon the vehicle in question, which has been seized merely on account of being an escorting vehicle to the container wherein the illicit liquor was being transported. Learned counsel submits that on account of non adherence to the clinching issue, sought to be addressed by the Judicial Magistrate, the order impugned can be termed as a non speaking, unreasoned or cryptic order, hence, cannot be sustained in the eye of law.

7. Learned counsel for the petitioner has contended that the bar of Section 69(4)(6) of Rajasthan Excise Act, 1950 is not applicable to the escorting vehicle, and the Judicial Magistrate has the power and jurisdiction to release the escorting vehicle and this proposition of law is well-established as has been expounded by the Rajasthan High Court, in case of **Kana Ram Vs. State of Rajasthan [2012(1) Cr.L.R. (Raj.) 157]** which has further been followed by the Rajasthan High Court in case of **Sikander**

**Ali Vs. State of Rajasthan [(2014) 1 Cr.L.R. (Raj.) 89]** in both the judgments, the non applicability of the bar as envisaged under Section 69 (4)(6) of Rajasthan Excise Act, 1950 has been discussed and it has been held that the Judicial Magistrate possesses the jurisdiction to release the escorting vehicle, if not seized for offences under Section 19/54, 54-A of Rajasthan Excise Act. In such view, counsel for the petitioner has prayed to quash the impugned order and to release his vehicle on Supurdgi.

8. Heard. Considered.

9. Having gone through the impugned order dated 29.02.2024, it appears that in para No. 1 and 2 of the order, reference of the application filed by petitioner seeking to release the seized vehicle Bolero Jeep bearing registration No.RJ-29-UA-6692 has been given.

10. Then in para No.3 objection raised by the Assistant Public Prosecutor in the light of Section 69 of Rajasthan Excise Act, 1950 has been noted and thereafter in para No. 4 and 5, the application filed by petitioner has been dismissed. For ready reference, para No. 4 and 5 of the order impugned are being reproduced as under:

"4. उभय पक्षकारान द्वारा प्रस्तुत तर्कों पर मनन किया गया। केस-डायरी का अवलोकन किया गया। केस डायरी के अवलोकन व बहस उभय पक्षकारान सुनने के पश्चात न्यायालय हाजा के विनम्र मत में उक्त वाहन का प्रयोग राजस्थान आबकारी अधिनियम के अंतर्गत अपराध कारित करने के लिए किया गया था। इन दिनों आबकारी से सम्बन्धित अपराध समाज में बढ़ रहे हैं। चूंकि उक्त वाहन बतौर वजह सबूत जप्त किया गया है।

5. अतः इस स्तर पर वाहन को प्रार्थी को सुपुर्दगी पर दिया जाना न्यायोचित प्रतीत नहीं होने से प्रार्थी का प्रार्थना-पत्र अस्वीकार कर खारिज किया जाता है। प्रार्थना-पत्र फैसलशुमार होकर शामिल रिमाण्ड कागजात / एफ.आई.आर. रहे।"

11. From perusal of the impugned order as referred hereinabove it stands clear that the Judicial Magistrate has not extended any heed on the issue that in which capacity, the vehicle in question Bolero Jeep was being used and for what reasons, this vehicle, has been seized by the Investigating Officer in the present FIR. Judicial Magistrate has not considered as to whether the vehicle in question was an escorting vehicle or was being used for transporting the liquor. No report in this regard from the concerned police station was called. Similarly, the Judicial Magistrate has not recorded any finding in respect of applicability of bar of Section 69(6) of Rajasthan Excise Act, 1950, to exercise its jurisdiction to release the vehicle seized for offence under Section Section 19/54, 54-A of Rajasthan Excise Act. Above-referred points are the key stone to consider and decide the application filed by petitioner and non-adherence to the fundamental and basic points, renders the impugned order a non-speaking, unreasoned or cryptic in nature. The issue has been dealt with in a casual and mechanical way, and no adherence to the relevant points which arise to determine the issue in question, shows that the order has been passed without application of judicial mind as much as in perfunctory manner.

12. This Court deems it just and proper to reiterate the settled principle of jurisprudence that it is not the expectation of law that a judicial order should be a detailed and lengthy, but the essential requirement is that every judicial order/ decision must reflect application of judicial mind at least on such clinching points, which are fundamentally required to deal with, to decide the issue under

consideration. It is immaterial that in how many pages an order or judgment has been written by the concerned judge, but the least expectation is that order must contain all reasons, justifying the conclusion of the judge, showing application of judicial mind on all points of facts and law, involved therein. A non-speaking, unreasoned or cryptic order, passed without taking into account the relevant facts and points of law attracted thereto, has always been deprecated and de-recognized by the Hon'ble Supreme Court. Through various pronouncements, the Apex Court has categorically held that reason is the heart beat of every judicial order/decision and absence of reasons, renders the order indefensible/unsustainable particularly when the order is subject to further challenge before the higher forum. It is also a settled proposition of law that the recording of reasons is essential need, being part of compliance of principles of natural justice as much as it ensures transparency and fairness in decision making process. At least the person who is adversely affected by the judicial order/decision must know as to why an order has been passed against him which has been recognized as an indispensable right of a litigant.

13. To buttress the above-stated legal proposition, reference of the judgment of Hon'ble Supreme Court in case of **State of Rajasthan Vs. Sohan Lal and Ors. [(2004) 5 SCC 573]** may be given wherein in para No. 3 Hon'ble Supreme Court passed following observations:-

“the giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before courts and which is the only indication to know

about the manner and quality of exercise undertaken, as also the fact that the Court concerned had really applied its mind”

14. In an another case of **Secretary & Curator Victoria Memorial Hall Vs. Howrah Ganatantrik Nagrik Samity & Ors reported in [(2010) 3 SCC 732]**, on the point of assigning the reasons for a conclusion by the Judicial Officer in his judicial order/decision, it was opined in para No.40 which is being extracted hereunder:-

“It is a settled legal proposition that not only administrative but also a judicial order must be supported by reasons, recorded in it. Thus, while deciding an issue, the Court is bound to give reasons for its conclusion. It is the duty and obligation on the part of the Court to record reasons while disposing of the case. The hallmark of an order and exercise of judicial power by a judicial forum is to disclose its reasons by itself and giving of reasons has always been insisted upon as one of the fundamentals of sound administration justice-delivery system, to make known that there had been proper and due application of mind to the issue before the Court and also as an essential requisite of principles of natural justice.”

15. Similar proposition of law has also been expounded by the Hon'ble Supreme Court in case of **Sant Lal Gupta and Ors. Vs. Modern Cooperative Group Housing Society Limited and Ors. [(2010) 13 SCC 336]** wherein it was held and observed that assigning reasons in a judicial order is hallmark of the order as well as sub-serve fundamental sound administration of justice delivery system. For details, para no. 27 of the judgment may be perused. Thus, the issue is well-settled and does not require any further elaboration, but it is to be kept in mind by every judge while passing a judicial order that every judicial order, howsoever short may be, should reflect reasonings and must show the

application of judicial mind more particularly where the order is subject to further challenge before the higher forum.

16. Coming back to the pristine issue involved in the present petition that is in respect of having jurisdiction by the Magistrate to release the vehicle, which has been seized in FIR for offences under Section 19/54, 54-A of the Rajasthan Excise Act of 1950 vis a vis the embargo as envisaged under sub-section (2-B) and (6) of Section 69 of the Act, 1950, same has already been dealt with and decided by the Coordinate Bench of this High Court, in case of **Kana Ram** (supra). It would be apposite to reproduce para No.5 and 6 of this judgment as under:-

“5. The learned counsel for the petitioner, in support of his contentions, relied upon the judgment of this court in *Sahdeo Ram Vs. State of Rajasthan*, 2002(2) WLN 619, wherein the co-ordinate Bench of this Court while interpreting the provisions of Section 69 of the Rajasthan Excise Act held that provisions of this Section apply only to the conveyance which is used in carrying such receptacle or package and such vehicle shall be liable to confiscation and as per the provisions of Section 54-A, when conveyance is used in the commission of an offence, and is liable to confiscation then the owner is deemed to be guilty of such offence and as per provisions of sub-section (6) of Section 69 whenever any means of conveyance as referred to in Clause (e) of sub-section (1) is seized in connection with commission of an offence under this Act, the Excise Commissioner or any officer authorized in this behalf by the State Government shall have, and, notwithstanding anything contained in any law for the time being in force any Court, Tribunal or other authority shall not have, jurisdiction to make order with regard to possession, delivery, disposal, release of such means of conveyance.

6. As per the charge-sheet filed in the Court, Bolaro Jeep being No. RJ-UA-2524 was seized during the course of investigation from the possession of petitioner Kana Ram and at that time, the alleged vehicle was not carrying the illicit liquor, therefore, it cannot be and could not be seized on the allegation that the same was being used for carrying illicit liquor.



In view of above, to prevent the abuse of the process of the Court and to meet the ends of justice, this criminal misc. petition is liable to be accepted and is hereby accepted. The orders of both the Courts below are hereby set aside. The Bolaro Jeep bearing No.RJ-19-UA-2524 be delivered to the petitioner on furnishing a surety and Supurdginama of Rs. 10,00,000/- each to the satisfaction of the trial Court for its production as and when the Court so directs."

(emphasis supplied)

17. The issue to release an escorting vehicle, seized under the Rajasthan Excise Act and power/jurisdiction of the Court to release the vehicle despite the embargo of Section 69(6) of the Rajasthan Excise Act of 1950, again came up before the High Court in case of **Sikander Ali** (supra) wherein as well, the interpretation of Section 69 of Rajasthan Excise Act as adopted by High Court in case of **Kana Ram** (supra) was followed and the Court held as under:-

"In this view of the matter and keeping in view the interpretation of Section 69 as adopted by this Court in Kana Ram Vs. State of Rajasthan (supra), it is evident that the embargo of Section 69 on the powers of Criminal Court to release the vehicle seized under the would only operate when the vehicle is seized while carrying the liquor. As admittedly, in this case the petitioner's vehicle was not carrying any liquor, the said embargo would not operate against the court's powers as regards the release of the vehicle is concerned. Moreover, if the vehicle is kept lying in the Police Station it will rot and will be rendered waste."

(emphasis supplied)

18. Similar proposition has been propounded by the High Court, in case of **Rakesh Vs. State of Rajasthan: Criminal Miscellaneous Petition No. 4580 of 2018** decided vide judgment dated 10.01.2019 and after adverting to Section 69(1) (e) of the Rajasthan Excise Act as also to Section 69(2-B) of Rajasthan Excise Act, 1950, the High Court held that the proper

remedy for release of the escorting vehicle, seized under the Excise Act, lies before the Court by way of application under Section 457 Cr.P.C. Para No. 6 of the judgment reads as under:-

“Thus, this Court clearly finds that the legislative intention of Section 69(1)(e) was to cover only those vehicles which were actually used in carrying such receptacles or package for confiscation under the Excise Act. Hence, exercise of Section 457 Cr.P.C. is the proper remedy for release of the car in question.”

(emphasis supplied)

19. In view of afore-referred judgments passed by the Coordinate Bench of High Court, the proposition of law stands with clarity that if the vehicle/conveyance is not found to be used to carry receptacles or package yet has been seized under the Rajasthan Excise Act, the proper remedy seeking to release such vehicle/conveyance would lie before the Court by way of filing an application under Section 457 Cr.P.C. and the embargo envisaged under Section 69 either under Section 69(2-B) or sub-section 6, would not apply against such vehicle/conveyance.

20. In the present case, contention of petitioner is that the petitioner's vehicle has not been found to be used for carrying the liquor, but his vehicle was an escorting vehicle to the container bearing registration No. RJ-18 GB 6893 wherein liquor was being transported, therefore, his vehicle being only an escorting vehicle, is not liable to be confiscated by the Excise Officer, hence, may be released by the Court in exercise of its jurisdiction under Section 457 Cr.P.C. If the contention of petitioner is correct and his vehicle is not involved for transporting the liquor or receptacles/package, the embargo of Section 69 of the Rajasthan Excise Act would not be applicable on his vehicle and same can be released by the

Judicial Magistrate, in exercise of its powers under Section 457 Cr.P.C. subject to usual conditions, which the Judicial Magistrate deems fit. However, the factual aspect of involvement of vehicle needs to be verified from the record, by the Magistrate before passing the order to release the vehicle on supurdginama.

21. This Court finds that the Judicial Magistrate while dealing with the petitioner's application under Section 457 Cr.P.C. has not dealt with the factual and legal aspect attracted herein and has dismissed the application by passing a cryptic order which is bereft of reasonings on the clinching points, which ought to have been addressed by the Magistrate, to decide the application effectively and judiciously. Such an order is not liable to be countenanced and accordingly impugned order is hereby quashed and set aside.

22. The application filed by petitioner under Section 457 Cr.P.C. stands revive on the file before the Judicial Magistrate and Judicial Magistrate is directed to decide the application afresh on merits by passing a reasoned and speaking order, after pondering over the factual and legal issues indicated hereinabove.

23. Since the application pertains to release of the vehicle on supurdginama, needless to observe that application shall be taken up for consideration expeditiously and as early as possible, which has already been observed by the Apex Court in case of **Sunderbhai Ambalal Desai Vs. State of Gujarat [(2002) 10 SCC 283]**.

24. As a final result, impugned order dated 29.02.2024 stands set aside and the petitioner's application filed under Section 457

Cr.P.C. is remanded to the Judicial Magistrate to decide afresh on merits expeditiously.

25. Accordingly, the instant criminal miscellaneous petition stands disposed of.

26. Stay application and all other pending application(s), if any, stand disposed of.

27. Let the copy of this Order be sent to the concerned Judicial Magistrate.

(SUDESH BANSAL),J