

(1983) 04 P&H CK 0015

In the Punjab And Haryana At Chandigarh

Case No : Criminal Revision No. 1384 of 1983 and Cri.M. No. 5424 of 1983 & and Cri.M. No. 5425 of 1983

Bahadur Singh

APPELLANT

Vs

State of Punjab and Lakhwinder Singh

RESPONDENT

Date of Decision : 22-04-1983

Acts Referred:

Citation : (1983) 04 P&H CK 0015

Hon'ble Judges : S.S.Dewan, J

Advocate : G.S. Bains, Ashok Jindal, J.S. Wasu, Advocates for appearing Parties

Judgement

S.S. Dewan, J.

1. Truck No. MHV 6088 was taken into custody by the C.I.A. Staff, Sirhind, from the custody of Lakhwinder Singh accused on January 30, 1983, and a case under Ss. 379/411, Indian Penal Code, was registered against him. Sohan Singh, Gurmit Singh and the accused Lakhwinder Singh made applications before the Judicial Magistrate Ist Class, Bassi Pathana, for releasing that truck on Suparddari during the pendency of the case. While disposing of those applications, the trial Magistrate, after hearing the parties counsel, observed in the following terms :

3. From whatever is on the file it transpires that there is some dispute regarding the title of the truck and it cannot be said at this stage whether any case regarding theft etc. is made out or not which will be decided on evidence to be led by the parties. I, therefore, direct the parties to litigate there title regarding the ownership and possession of the truck No. MHV 6088 in Civil Court of appropriate jurisdiction and submit the final order to this Court so that the truck should be handed over to its real claimant. At present, the truck is standing in police Station Sirhind and it is there for the last 7 months (since 30.1.1983) and is likely to be materially damaged if it is not properly maintained and run. I, therefore, consider it just and expedient to release the truck to accused Lakhwinder Singh from whose possession it was taken out by the police on his

furnishing suparddari bond in sum of Rs. 2,00,000/ which should be attested and verified by the Tehsildar concerned, regarding the solvency of the surety. The truck is released only for the present for convenience of recording evidence in the case and the accused can be ordered at any time to surrender the truck in the Court and he shall have no claim at that time. he will produce the truck at each hearing of the case.

Feeling aggrieved, Bahadur Singh, claiming himself to be the owner of truck No. MHV 6088 has now came up in revision.

2. The only argument labored with little persistence on behalf of the petitioner is that the suparddari of the truck should have given to Bahadur Singh petitioner, who is the owner of the truck and not to Lakhwinder Singh, who is the accused charged with the offences under Ss. 379/411, Indian Penal Code. Reliance is placed on a decision in Nandi Ram v. State of Gujarat and others, A.I.R. 1967 Gujarat 80. It is not disputed that the trial is still pending in the Court against Lakhwinder Singh for the alleged theft of the truck. The Court is not called upon at this stage to make an inquiry under S. 457 of the Code of Criminal Procedure, 1973 (for short, the Code) to find out the person who is entitled to the possession of that truck. The truck was admittedly recovered from the possession of Lakhwinder Singh. It has yet to be proved by the prosecution that this truck was the same which originally belonged to Bahadur Singh and that it was stolen from his possession. It has also to be proved that it was stolen by Lakhwinder Singh or that it was purchased by one Sohan Singh, under whom Lakhwinder Singh was alleged to have been working as a driver of the truck. If after the conclusion of the inquiry or the trial, the Court comes to the conclusion that the truck which was recovered from Lakhwinder Singh was the one that was owned by Bahadur Singh and stolen from his possession, then the Court may pass an order under S. 452 of the Code directing the delivery of the truck to Bahadur Singh, who is now claiming rights of ownership of the truck under the law because S. 452 of the Code says that "when an inquiry or a trial in any criminal Court is concluded, the Court may make such order at it thinks fit for the disposal by destruction, confiscation or delivery to any person claiming to be entitled to possession, thereof or otherwise of any property."

3. Therefore, in the circumstances the trial Magistrate was right and justified in releasing truck of Lakhwinder Singh on Suparddari. It is needless to refer to the decision in Nandi Ram's case, (supra), because the facts of that case are altogether different and the ratio thereof is not applicable to the facts and circumstances of this case.

4. There is one more circumstance which militates against the petitioner. The impugned order, as the facts of the case reveal, cannot be said to be one passed under S. 452 of the Code. It is covered by S. 451 of the Code under which the Court, in case it is unable to find as to who is the person entitled to its possession, may merely hand over the custody of the property to a person subject to the condition that he would produce the same in court as and when

required. This type of order cannot be said to be different in nature from the one passed under s. 451 of the Code. Viewed thus, the impugned order not having brought the main controversy of the theft of the vehicle to an end, is interlocutory in character against which revision under S. 401 of the Code is clearly barred.

5. In the result, the revision petition fails and the same is accordingly dismissed.