
(2003) 05 P&H CK 0071

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 35218-M of 1998

Bala Krishana Menon

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 28-05-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 451

Citation : (2003) 135 PLR 727 : (2003) 3 RCR(Criminal) 789

Hon'ble Judges : Viney Mittal, J

Bench : Single Bench

Advocate : J.V. Yadav, for the Appellant; Girish Agnihotri, A.A.G., for the Respondent

Final Decision : Dismissed

Judgement

Viney Mittal, J.—The petitioner is aggrieved against the orders dated December 1, 1997 and July 31, 1998 passed by the learned Chief Judicial Magistrate, Faridabad and order dated November, 17, 1998 passed by the learned Additional Sessions Judge, Faridabad. The aforesaid orders have been appended as Annexures P-1, P-2 and P-3, respectively, with the petition.

2. An FIR No. 563 dated May 16, 1997 was registered against the petitioner under Sections 420/467/468/471 of the Indian Penal Code. He was arrested, while he was in custody then an Esteem car bearing No. DL-9C-1553, which was also taken possession of by the police from him was ordered to be released to City Bank-respondent No. 2. In fact the aforesaid bank made request for superdari to the learned trial Magistrate on the ground that the bank as the financier of the car and since the instalments had not been paid by the owner B.K. Menon (the present petitioner), therefore, the right to re-possess the car had accrued to the financier. On the basis of the aforesaid fact, the aforesaid car was ordered to be released to the said bank.

3. After the petitioner was released from custody, he applied to the learned trial

Magistrate to cancel the aforesaid superdari and deliver the possession of the aforesaid car to the petitioner.

4. The learned trial Court vide order dated July 31, 1998 found that the car in question as in fact, financed by the aforesaid bank and, therefore, since there was a default committed by the present petitioner, who as merely a hirer and had not paid the instalments, therefore, a right had accrued to the bank to re-possess the car. Accordingly, the aforesaid request made by the petitioner was disposed of with a liberty to the petitioner to make all the payments as per terms and conditions of the finance agreement to the bank and on the aforesaid payment, the petitioner was to get the car from the bank.

5. The petitioner challenged the aforesaid order by filing a revision petition before learned Additional Sessions Judge. The learned Additional Sessions Judge also affirmed the findings of fact recorded by the learned trial Magistrate. Accordingly, the revision petition was dismissed.

6. The petitioner has now approached this Court through the present petition.

7. I have heard Sh. J.V. Yadav, learned counsel appearing for the petitioner and with his assistance have also gone through the record of the case.

8. Sh. J.V. Yadav, learned counsel for the petitioner has submitted that in fact the aforesaid car was not connected with the said commission of the offence and therefore, could not have been treated as a case property. On that basis, Sh. Yadav has maintained that in fact the superdari of car could not have been given to the bank under any circumstance.

9. Although, on the face of it, the contention raised by learned counsel for the petitioner appears to be correct. However, it is not disputed by the learned counsel that the car was in fact financed by the City Bank respondent No. 2. It is also not disputed that the petitioner had been defaulter in making the payment of instalments/hire charges to the said bank. If the petitioner had committed a fault, then the corresponding right had automatically accrued to the bank to re-possess the car. On the basis of the aforesaid right, the bank had approached the learned trial Magistrate for releasing the car on superdari. Subsequently, when the petitioner moved an application for getting back the possession and cancelling superdari of the bank, then the learned trial Magistrate passed an order dated July 31, 1998, whereby the petitioner was granted a liberty to get back the possession of the car from the bank after making all the payments.

10. I do not find any error in the aforesaid order passed by the learned trial Magistrate. The petitioner could only have a right to get the possession of the car back from the City Bank only after making all the payments due towards the bank.

11. In this view of the matter, I do not find that any case is made out for exercising the inherent powers of this Court for quashing the orders impugned by the petitioner in the present petition.

No merit. Dismissed.