

(2004) 05 RAJ CK 0003

In the Rajasthan High Court

Case No : Criminal Revision Petition No. 890 of 2002

Bhawani Singh

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 11-05-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 457

Citation : (2004) CriLJ 3187 : (2004) 4 RLW 2155 : (2004) 3 WLC 532

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Advocate : M.K. Garg, for the Appellant; M.P. Bishnoi, Public Prosecutor for Respondent 1, Vineet Mathur, for Respondent 3 and Anil Sharma, for Respondent 2, for the Respondent

Final Decision : Dismissed

Judgement

Sunil Kumar Garg, J.—This revision petition has been filed by the petitioner with the prayer that the order dated 28-9-2002 passed by the learned Addl. Chief Judicial Magistrate No. 2, Bikaner, by which he decided three applications together filed u/s 457, Cr.P.C. one by the petitioner, second by the respondent No. 2 Khuman Singh and third by the respondent No. 3 Prem Prakash and ordered to give the custody of the Jeep No. RJ 19 C 6339 (old) and RJ 19 T 2836 (new) to the respondent No. 3 Prem Prakash, be quashed and set aside.

2. It arises in the following circumstances:

On 27-3-2002, the petitioner lodged a report in the Police Station Sadar, Bikaner stating inter alia that he purchased one Mahendra D.I. Jeep No. RJ 19-C 6369 from Elcon finance Company (respondent No. 2) after taking loan from the Bank of Baroda under Finance Scheme. It was further stated by the petitioner in that report that on 25-3-2002 at about 6.00 p.m., he went to Hanumangarh after keeping the jeep in question in the house of his relative Deewan Singh and on 27-3-2002, Deewan Singh informed him on telephone that the Jeep in question

had been taken away by somebody else after breaking the lock of main gate.

On this report, police registered the case and chalked out regular FIR No. 68/02 for the offence u/s 379, IPC and started investigation and during investigation of the police, the police file was called by this Court and the same is attached with this file.

The case of the petitioner is that he purchased the Jeep in question on the basis of hire-purchase agreement for the respondent No. 2 for Rs. 2,68,508 and against that amount, he had already paid Rs. 4,16,989/-to the respondent No. 2, but in spite of that, in the absence of the petitioner, the respondent No. 2 had taken the Jeep in question from the custody of the petitioner and not only this, thereafter, the respondent No. 2 got the Jeep in question registered as Taxi and obtained new number being RJ 19T 2836.

The police investigation file further reveals that the respondent No. 2 had further sold the Jeep in question to the respondent No. 3 Prem Prakash and during the course of investigation, on 13-9-2002, police seized the Jeep in question from the custody of the respondent No. 3 Prem Prakash and there is no dispute on the point that registration of the Jeep in question bearing new No. RJ 19 T 2836 is in the name of the respondent No. 3 and on that day, he was registered owner.

When the Jeep in question was seized by the police on 13-9-2002, three applications were made by three persons, namely, petitioner, respondent No. 2 and the respondent No. 3 under the provisions of Section 457, Cr.P.C. seeking custody of the Jeep in question before the Court of Addl. Chief Judicial Magistrate No. 2 Bikaner.

The learned Addl. Chief Judicial Magistrate No. 2, Bikaner through impugned order dated 28-9-2002 decided all the three applications u/s 457, Cr.P.C. together and he came to the conclusion that the respondent No. 3 Prem Prakash was registered owner of the Jeep in question when it was seized by the police on 13-9-2002 and, therefore, he ordered that the custody of the "Jeep in question be given to the respondent No. 3 Prem Prakash holding inter alia :---

(i) That since the petitioner was found defaulter by the respondent No. 2, therefore, the Jeep in question was taken by the respondent No. 2, but in taking the Jeep from the custody of the petitioner, the respondent No. 2 had not fulfilled the conditions Nos. 21(i) and 22(b) of the hire-purchase agreement and suo motu declared the petitioner as defaulter without terminating the agreement and without giving opportunity of hearing to him.

(ii) That after taking the Jeep in question from the custody of the petitioner, the respondent No. 2 got the Jeep in question registered as Taxi and therefore, sold it to the respondent No. 3.

(iii) That on the date of seizure of the Jeep in question by the police i.e. 13-9-2002, the respondent No. 3 was its registered owner and not the petitioner, though he was in possession of the Jeep in question when it was taken away by

the respondent No. 2.

(iv) That so far as handing over of Jeep in question to the respondent No. 2 is concerned, the learned Magistrate found that the claim of the respondent No. 2 was baseless as he had already sold the Jeep in question to the respondent No. 3.

(v) That so far as the claim of the respondent No. 3 is concerned, the learned Magistrate found that since the respondent No. 3 had purchased the Jeep in question after making full payment to the respondent No. 2 and on the date when the police seized the Jeep in question, he was its registered owner, therefore, the claim of the respondent No. 3 stands on better footing than petitioner and thus, the respondent No. 3 was entitled to the custody of the Jeep in question.

(vi) That so far as the claim of the petitioner for handing over the custody of the Jeep in question is concerned, the same was not accepted by the learned Magistrate but he observed that the petitioner had a good claim against the respondent No. 2 and for that, the petitioner should seek remedy in the appropriate forum.

Thus, in the above circumstances, the learned Magistrate ordered that the custody of the Jeep in question be handed over to the respondent No. 3 meaning thereby he accepted the application of respondent No. 3 and rejected the applications of the petitioner and the respondent No. 2.

Aggrieved from the said order dated 28-9-2002 passed by the learned Addl. Chief Judicial Magistrate No. 2, Bikaner, the petitioner has preferred this revision petition.

3. In this petition, it has been submitted by the learned counsel for the petitioner that since the petitioner had already paid the entire amount of the Jeep in question to the respondent No. 2, therefore, taking of Jeep in question by the respondent No. 2 from (he custody of the petitioner without terminating, the agreement and without giving show cause notice and an opportunity of hearing to the petitioner, was illegal and without jurisdiction. Hence, since in the very beginning the Jeep in question was in the possession and custody of the petitioner, therefore, it should have been given to him and giving of custody of Jeep in question to the respondent No. 3 is illegal and without jurisdiction because right in his favour was created later on. Thus, impugned order of the learned ACJM giving custody of the Jeep in question to respondent No. 3 cannot be sustained and liable to be quashed and set aside.

4. On the other hand, the learned counsel for the respondent No. 3 has submitted that he was bona fide purchaser of the Jeep in question and he had purchased the Jeep in question after paying full amount to the respondent No. 2. Hence, no illegality has been committed by the learned Magistrate in giving custody of the Jeep in question to the respondent No. 3 and this petition deserves to be dismissed.

5. I have heard the learned counsel for the petitioner, learned Public Prosecutor and the learned counsel for the respondents Nos. 2 and 3 and gone through the record of the case.

6. There is no dispute on the point that the petitioner purchased the Jeep in question from the respondent No. 2 under hire-purchase agreement and there is also no dispute on the point that before taking the Jeep in question from the custody of the petitioner, the respondent No. 2 had neither terminated the agreement nor had issued any show cause notice raising demand, if it was due against the petitioner nor had given any opportunity of hearing to the petitioner.

7. There is also no dispute on the point that as per conditions Nos. 21(1) and 22(b) of the agreement, prior notice was must.

8. There is also no dispute on the point that police investigation in FIR No. 68/02 lodged by the petitioner is still pending and the same could not be completed because the police file was called by this Court.

9. There is also no dispute on the point that after taking the Jeep in question from the custody of the petitioner, the respondent No. 2 got it registered as Taxi and obtained a new number being RJ 19 T 2836 and thereafter, the respondent No. 3 purchased the Jeep in question after making full payment to the respondent No. 2 and the Jeep in question is registered in the name of the respondent No. 3.

10. There is also no dispute on the point that Jeep in question was seized by the police on 13-9-2002 during investigation in the FIR lodged by the petitioner from the possession of the respondent No. 3.

11. There is also no dispute on the point that when the Jeep in question was seized by the police on 13-9-2002, its registered owner was respondent No. 3.

12. There is also no dispute on the point that the impugned order of giving custody of Jeep in question to the respondent No. 3 was passed under the provisions of Section 457, Cr. P.C.

13. Thus, in the facts and circumstances just mentioned above, the question for consideration is whether the impugned order dated 28-9-2002 by which custody of the Jeep in question was given to the respondent No. 3 can be sustained or not or whether the petitioner is entitled to the custody of the Jeep in question or not.

14. u/s 457, Cr. P.C. temporary orders can be passed with regard to disposal of the seized property. Sections 451 and 457, Cr. P.C. somewhat overlap, though Section 457, Cr. P.C. is a general provision applicable to all cases where there is no enquiry or trial pending.

15. Section 457, Cr. P.C. deals with a situation where an enquiry is neither pending nor concluded. Under this section, what the Magistrate has to consider is, who is entitled to the possession of property which has been seized by the

police. Where it is proved that the person from whose possession the property was seized came by it dishonestly, the Magistrate may have to consider questions of title in order to determine the best right to possession. But where it appears that the police have seized property from a person who is not shown to have committed any offence in relation to that property, the Magistrate can only hold that person is entitled to possession of the property. Once property is seized under circumstances mentioned in section then, irrespective of the fact whether the investigation by the police discloses an offence or not, the Court has to dispose of the property and while doing so, it has got an absolute discretion to pass an order as it thinks fit.

16. While deciding the application u/s 457, Cr. P.C., the law does not require the Magistrate to finally adjudicate upon the disputed claims. The sine qua non for the delivery of the property u/s 457, Cr. P.C. is the entitlement of the person to possess.

Dispute as to ownership in respect of hire-purchase agreement.

17. For all practical purposes, a person who is shown as the registered owner in the -certificate of registration is the owner of the vehicle. The person, who is in possession of the vehicle, which is the subject of hire-purchase agreement is also the owner for the purposes of the Motor Vehicles Act.

18. Therefore, a person, who is in possession of a vehicle, which is a subject of hire-purchase agreement, can submit an application for seeking custody of the vehicle in question.

19. Not only this, the Court should also keep in mind while considering the claims of the parties that certificate of registration of motor vehicle is the prima facie evidence of ownership. In a dispute over ownership of the vehicle, the Court will give custody to the party in whose name registration certificate stands.

20. Thus, it can be concluded that where a party is in possession of the vehicle under hire-purchase agreement and during the pendency of that hire-purchase agreement, if a third party (in the present case respondent No. 3) also purchases that vehicle without notice of the hire-purchase agreement, then that third party (in the present case respondent No. 3) becomes entitled to interim custody of the vehicle. ?

21. Therefore, since on the date when the Jeep in question was seized by the police on 13-9-2002, the respondent No. 3 was its registered owner as registration certificate was in his name and he purchased the Jeep in question after making full payment to the respondent No. 2 and no doubt prior to that, the Jeep in question was in possession of the petitioner under the hire-purchase agreement, but since on the date of seizure of the Jeep in question by the police on 13-9-2002, the respondent No. 3 was its registered owner, therefore, in these circumstances, if the learned Magistrate has ordered to give the custody of the Jeep in question to the respondent No. 3 taking into consideration that he was

the registered owner, he has committed no illegality or irregularity in doing so.

22. Moreover, if rights of the petitioner as well as of respondent No. 3 are compared and after comparison, if the learned Magistrate has preferred the claim of the respondent No. 3 over the claim of the petitioner on the ground of latest possession, and registered owner, he has committed no illegality in doing so.

23. Apart from the above, it appears that the respondent No. 3 from whose possession the Jeep in question was seized by the police has not committed any offence in relation to that Jeep and therefore, in such situation, the only course that was open to the Magistrate was to hold the respondent No. 3 entitled to possession of the Jeep in question. From this point of view also, the custody of Jeep in question was rightly given to the respondent No. 3.

24. The claim of the respondent No. 2 was rightly rejected by the learned Magistrate as at this stage it is not clear whether he has committed any offence or not and criminal case is pending against him and furthermore, when he had already sold the Jeep in question to the respondent No. 3, he cannot claim custody of the Jeep in question.

25. Had the Jeep in question would have not been purchased by the respondent No. 3 from the respondent No. 2 and had the dispute over the custody of Jeep in question would have been between the petitioner and the respondent No. 2 under the hire-purchase agreement, in such a situation, the claim of the petitioner to the custody of the Jeep in question would have prevailed over respondent No. 2.

26. For the reasons stated above, no interference is called for with the impugned order dated 28-9-2002 passed by the learned Addl. Chief Judicial Magistrate No. 2, Bikaner giving custody of the Jeep in question to the respondent No. 3, as it does not suffer from any basic illegality or infirmity and this revision petition deserves to be dismissed.

Accordingly, this revision petition filed by the petitioner is dismissed.