
(2017) 04 P&H CK 0023
In the Punjab And Haryana At Chandigarh
Case No : CRM-M No.18760 of 2015

Birwati @ Birbeti

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 05-04-2017

Acts Referred:

Citation : (2017) 3 RCRCriminal 207

Hon'ble Judges : Raj Mohan Singh, J.

Bench : Single Bench

Advocate : Ram Bilas Gupta, Advocate, for the Petitioner; Ms. Gagandeep Kaur, AAG, Haryana, for the Respondents; Kunal Dawar, Advocate, for the Respondents No. 4, 6 to 11.

Final Decision : Disposed Off

Judgement

Raj Mohan Singh, J.—This petition has been filed under Section 482 Cr.P.C for quashing of order dated 22.07.2014, whereby the application for releasing tractor along with fodder cutting machine/thresher on sapurdari was dismissed and order dated 16.02.2015 wherein revisional Court also held the revision to be not maintainable after recording that the tractor is lying unattended and unclaimed beside Police Station and police neither took the same in custody, nor took any action against its owner. Negligence of the police in performance of its duty was also found.

2. When the case came up for hearing before this Court on 01.06.2015, this Court passed the following order:-

"Learned counsel for the petitioner states that tractor and thrashing machine of the petitioner are not involved in any case as case property and still the same are lying parked under the domain and control of Police Station Tigaon.

The photographs placed on record are suggestive of the fact that tractor and thrashing machine are parked in front of Police Station itself along with two-three vehicles in defunct condition. The Police took the stand that site does not belong

to the Police nor the vehicle is involved in any case.

The prayer for release of vehicle on supardari has been declined by the Courts below.

Notice of motion to respondents No.1 to 3 for 05.06.2015.

At this stage, Mr. Rajesh K. Sheoran, Addl. A.G., Haryana accepts notice on behalf of respondents No.1 to 3. Let three copies of the petition be supplied to him by learned counsel for the petitioner.

In view of aforesaid, SHO Police Station, Tigaon is directed to file his specific affidavit to explain as follows:-

i) Whether the tractor and thrashing machine are the case property in some criminal case. If not, then why the Police has not taken any action in terms of handing over the said vehicle to registered owner since 2012?

ii) How the vehicle came to the spot and by whom it was brought?

iii) Whether the vehicle was voluntarily parked by complainant in close vicinity of the Police Station?

iv) If the vehicle is unclaimed by anyone, then what action has been taken by the Police in respect of unclaimed vehicle which is parked in close vicinity of Police Station for the last 3 three years.

The aforesaid affidavit be filed on or before the next date of hearing. Before filing the affidavit, office of Commissioner of Police, Faridabad be duly apprised of, about the issue involved."

3. Thereafter, notice was also issued to respondent No.4 vide order dated 05.06.2015. On 11.08.2015, the status report by way of affidavit of Commissioner of Police, Faridabad was taken into consideration and following order was passed:-

"In compliance of order dated 31.07.2015, learned State counsel has filed status report by way of an affidavit of Commissioner of Police, Faridabad in the Court today and the same is taken on record. A copy thereof has been supplied to learned counsel for the petitioner. Mr. Subhash Yadav, Commissioner of Police, Faridabad is also present in the Court.

Learned counsel for the petitioner submits that vide order dated 01.06.2015, the respondent-State was asked to file specific affidavit with regard to certain queries but said queries have not been responded in the affidavit. The justification with regard to delay has been made by the respondent-State by taking a new ground whereas from the very beginning, no action was taken by the police and the vehicle of the petitioner has now shown to be parked outside the police station whereas earlier it was parked inside the police premises. Learned counsel also submits that this stand has now been taken by the respondent- State just to save themselves.

Adjourned to 18.09.2015.

Meanwhile, the petitioner is directed to file his affidavit stating therein the detailed facts as to how the vehicle was parked in the police premises inspite of having knowledge that no one is claiming the vehicle and it was not required in any case.

Personal appearance of Commissioner of Police, Faridabad and Rajdeep Singh, SHO, Police Station Tigaon is exempted."

4. The petitioner complied with the directions issued vide order dated 11.08.2015 and filed his affidavit. As per affidavit dated 10.08.2015 filed by Commissioner of Police, it was recorded that after preliminary inquiry, Deputy Commissioner of Police, Ballabgarh had recommended a regular departmental enquiry against ASI Dharambir and HC Hoshiar Singh.

5. Evidently, tractor/fodder cutting machine was parked in front of the Police Station since 2012. The manner in which the vehicle came to the spot has been narrated by the contesting parties differently. Admittedly, the tractor and fodder cutting machine are not the case property in any case and precisely, the application for taking the same on sapurdari was rejected by the Courts below. However, the factum of tractor and fodder cutting machine present in the close vicinity of the Police Station is admitted. A specific question No.4 was framed in the order dated 01.06.2015 to the effect that if the vehicle is unclaimed by anyone, then what action has been taken by the police in respect of unclaimed vehicle which is parked in close vicinity of Police Station for the last three years.

6. On the aforesaid question, first affidavit dated 05.06.2015 was filed by inspector Rajdeep Singh. According to the affidavit, the tractor along with thrashing machine are neither in police custody, nor the same are the case property in any criminal case, rather the same are lying parked unattended outside the campus of the police station, Tigaon. The application for taking the aforesaid vehicle on sapurdari filed by the petitioner was dismissed by the trial Court after taking into consideration the material on record vide order dated 01.04.2014 and the revision filed against the said order was also dismissed by the Additional Sessions Judge, Faridabad on 05.05.2014. The second application for taking the tractor on sapurdari was also dismissed by the trial Court as well as by the revisional Court. In the inquiry conducted by the Assistant Commissioner of Police, Tigaon, the claim of the petitioner was found to be false and accordingly, the representation filed by the petitioner was rejected by the Deputy Commissioner of Police, Ballabgarh.

7. In the second affidavit dated 10.08.2015 filed by the then Commissioner of Police, Faridabad, it was recorded that a preliminary inquiry was got conducted through Deputy Commissioner of Police, Ballabgarh. As per report dated 08.08.2015, the tractor and thrashing machine are neither in police custody, nor wanted as case property in any criminal case. The tractor and thrashing machine are lying parked unattended outside the campus of the police station, Tigaon. A

complaint dated 25.04.2012 in respect of snatching of the vehicle was moved before the police by respondents No.5 to 11, which was enquired into by the then Assistant Commissioner of Police, Tigaon. During the inquiry, respondent No.4 stated in his statement that on 25.04.2012 at about 5 PM, Parsha and Bir Singh came to his house and requested to his father that vehicle in question be retained in lieu of loan of Rs. 1 lac taken by them. It was also requested that if the loan is not returned in 20 days, then the vehicle in question will be of his father. Thereafter, the vehicle in question was brought by his father to their house from the house of the petitioner, but thereafter, on making a complaint by Bir Singh son of the petitioner, the vehicle in question was brought to the Police Station on 26.04.2012 by respondents No.4 and 5 on the asking of ASI Tej Ram of police station, Tigaon. From the aforesaid affidavit, it is found that the tractor was brought to the Police Station by respondents No.4 and 5 on the asking of ASI Tej Ram of police station, Tigaon.

8. Third affidavit was filed by Sh. Hanif Qureshi, IPS, Commissioner of Police, Faridabad on 11.11.2016 to the effect that after filing the affidavit dated 10.08.2015 by the then Commissioner of Police and after holding the preliminary inquiry, the Deputy Commissioner of Police, Ballabgarh had recommended a regular departmental inquiry against ASI Dharambir and HC Hoshiar Singh and the departmental action has been initiated against the delinquents. During departmental inquiry, EASI Anil Kumar admitted his guilt vide statement dated 11.04.2016 that an addition was made in the DDR No.28 dated 26.04.2012 by him. As a result, ASI Dharambir and HC Hoshiar Singh were exonerated from the charges. EASI Anil Kumar is being prosecuted departmentally.

9. After issuance of notice to respondent No.4, he also filed short reply by way of affidavit. In his affidavit, he took the stand that in the inquiry conducted by the Commissioner of Police tempering of DDR No.28 dated 26.04.2012 was found which was intended to help the petitioner and not the private respondents. The petitioner was the only beneficiary of the said addition in the DDR, whereas private respondents are not the beneficiaries, nor have suffered any loss by the said entry. The father of answering respondent No.4 i.e. Mahipal had advanced a loan of Rs. 1 lac to the husband of the petitioner namely Paras Ram. Respondent No.4 was the then Sarpanch of the village. Paras Ram was encroaching upon the land of the Panchayat by digging a pit and using the same as toilet, for which notice was issued to the petitioner under Section 24(2) of the Haryana Panchayati Raj Act, 1994. The pits were filled in the presence of BDPO, Faridabad and the relations got strained between the parties. Father of respondent No.4 namely Mahipal asked husband of the petitioner to return the amount of loan. On 25.04.2012, the husband of the petitioner and son of the petitioner came to the house of respondent No.5 and requested for 20 days time for returning the loan amount. They left their tractor voluntarily with respondent No.5 as a security. However on 26.04.2012, respondent No.5 received a telephonic call from police station, Tigaon and was asked to bring the tractor in the police station. The tractor was taken to Police Station by respondent No.5 and since then, private

respondents have nothing to do with the tractor. In the affidavit filed by respondent No.5, the factum of tractor being brought by respondent No.5 to the Police Station has been admitted. This has also been admitted that tractor was brought to the Police Station on the asking of ASI Tej Ram of police station, Tigaon in the affidavit dated 10.08.2015 submitted by the then Commissioner of Police, Faridabad.

10. The question No.4 as framed in the order dated 01.06.2015 assumes significance inasmuch as that in all the affidavits, the factum of action taken in respect of unclaimed tractor and thrashing machine/fodder cutting machine parked in the close vicinity of the Police Station has not been answered. An effort has been made to explain DDR No.28 dated 26.04.2012 showing the tractor to be in police custody viz-a-viz DDR entry which does not contain the same. The factum of incriminating facts mentioned in the DDR or otherwise, could have been taken note of by the competent authorities so as to prosecute the erring officer. Precisely, in the aforesaid context, one Anil Kumar EASI has taken the responsibility and as a consequence of that ASI Dharmabir an HC Hoshiar Singh have been exonerated from the charges.

11. Evidently, the tractor and fodder cutting machine are not the case property in any criminal case. It has been found by the revisional Court as a matter of fact that the tractor and thrasher are lying unattended and unclaimed in close proximity of the police station. Police did not take the same in custody, nor took any action against the owner. Negligence of the police was found in performance of its duty. The narration of facts given in different affidavits has brought out a picture that the tractor and thrasher were in possession of respondent No.4 in the context of advancing loan to the husband of the petitioner and the same were brought to the police station by respondent No.5 himself on the asking of ASI Tej Ram. Therefore, the inference against the petitioner that tractor and thrasher were brought by her to the Police Station stands vanished away. The fact remains that even despite specific question framed by this Court on 01.06.2015, the police has not explained as to why no action was taken against anyone in respect of vehicle being unclaimed. Neither unclaimed vehicle was taken into police custody, nor any action was taken against any wrongdoer. It appears that the police has acted in connivance with private respondents No.4 and 5, who brought the tractor to the police station, Tigaon on the asking of ASI Tej Ram, as has been admitted in the affidavit filed by the Commissioner of Police.

12. The petitioner belongs to an agricultural community and he has been deprived of an agricultural tool since 2012 without there being involvement of tractor in any criminal case. The mala fide of private respondents in collusion with the police incharge of police station, Tigaon cannot be ruled out. The tampering of DDR entries cannot be specifically commented upon in view of pending departmental inquiry against Anil Kumar EASI. The initiation of departmental inquiry against EASI Anil Kumar and dropping the proceedings

against ASI Dharambir and HC Hushiar Singh would not answer question No.4 in any manner.

13. From the material on record, I found that the petitioner has not brought the tractor to the Police Station in view of categoric averments made in the affidavit dated 10.08.2015 that the tractor was brought by respondent No.5 on the asking of ASI Tej Ram. Similar reply was filed by respondent No.4 when he pleaded in para No.5 of the affidavit that the tractor was taken by respondent No.5 to the Police Station on the basis of telephonic call received from the police station.

14. In view of aforesaid facts, I am constrained to say that the petitioner has been deprived of an important agricultural tool for a period of about 5 years without there being any involvement of the same in any criminal case. The petitioner failed to get the same on sapurdari. Once the tractor is found parked in front of the police station, a poor person cannot dare to take it away against the wishes of the police. The police has derelicted in performance of its duty for obvious reasons as recorded earlier and the petitioner has been made to suffer on account of evil design of the complainant party in collusion with the police. Since the departmental proceeding is confined to the misconduct on account of alleged tampering of DDR and no action has been initiated in respect of in-action in terms of question No.4 framed by this Court vide order dated 01.06.2015, therefore, I deem it appropriate to direct the SHO, Police Station, Tigaon to deliver possession of the tractor and thrasher to the petitioner forthwith. Since the petitioner has been deprived of the tractor and thrasher for about 5 years, therefore I deem it appropriate to burden the State of Haryana with a cost of Rs. 3 lacs to be paid to the petitioner as a compensation towards likely damage to the tractor/thresher and mental harassment meted to the petitioner during this period. Liberty is granted to the State of Haryana to recover the said amount from the erring police officials by fixing their personal liabilities in the aforesaid context. This petition is disposed of accordingly.