
(1963) 12 P&H CK 0026

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 827 of 1963

Charan Singh

APPELLANT

Vs

The Anand Finance Private Ltd., Delhi, and another

RESPONDENT

Date of Decision : 20-12-1963

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (1963) 12 P&H CK 0026

Hon'ble Judges : Bedi, J

Bench : Single Bench

Advocate : D.S. Tewatia, for the Appellant; H.L. Sarin and Messrs. M.R. Mahajan and S.S. Sodhi, for the Respondent

Final Decision : Dismissed

Judgement

Bedi, J.—Charan Singh petitioner in this case has put in this petition under Article 227 of the Constitution of India and under sections 520 and 561 A of Criminal, Procedure Code alleging that he was the owner of truck No. D.L.G, 3630 and was, challaned on 23rd April, 1963 in Tahsil Nuh District Gurgaon under, a number of sections of the Motor Vehicles Act. His truck was also, at the time taken into Custody by the police, and was released on 28th April 1962 on furnishing a security of Rs. 20,000.00 to one, Shri Ram Singh son of Dulle Singh, resident of Taoru, District Gurgaon, on superdari. The said superdar, however, on 6th May, 1962 returned the truck to the police as the order of superdari in his favour was cancelled by the Court. On 8th May, 1962-the truck in question was given on superdari, on furnishing a security in the sum of Rs. 20,000.00 to Anand Finance Company Private Ltd." Delhi through one of their Directors Shri Sardari Lal vide order of the Additional District Magistrate, Gurgaon, dated 8th May, 1962, a copy of which is at annexure "A", The said order passed ex-parte without any notice to the petitioner. The petitioner, moved an application in the Court of the Addl. District Magistrate, requesting" him to cancel the order of superdari in favour of Anand, Finance" Company," but the Additional-District Magistrate vide

his order dated April, 1963 rejected his prayer and advised the petitioner to move the, High Court as the Additional District Magistrate expressed, his inability to review the order of his predecessor, a copy of which is at annexure "B". The petitioner was ultimately fined Rs. 65.00 as he was found guilty under some sections of the Motor Vehicles Act on 17th April, by the Addl. District Magistrate, but the Additional District Magistrate failed to pass any order with regard to the disposal of the said truck either by way of delivery of the same to the petitioner by way of its confiscation to the State. As a result of this omission the truck continued to be in the custody of respondent NO. 1, Anand Finance Company, and is still in their possession. The petitioner again moved the Additional District Magistrate, Gurgaon, for return of the truck, to him twice, but those application were dismissed, (copies of the orders are at annexures "B" and D). The petitioner, alleged that the Additional District, Magistrate had no jurisdiction to hand over the vehicle to respondent No. 1 and in any case he could not pass any order, ex-parte. He further maintained that u/s 517 of Criminal Procedure Code the Additional District Magistrate was bound to pass an order with regard to the disposal of the property in the custody of the Court and hand over to the person who was entitled to the property. The petitioner was owner of the truck and was consequently entitled to its possession. It therefore, prayed that the truck in question be returned to the petitioner. The petitioner maintained that there, was no other efficacious remedy" available to the petitioner except by way of writ under article 227 of the Constitution of India.

2. Rule was issued. against respondents 1 and 2. Respondent No. 1 put in a written statement maintaining that this petition under Article 227 of the Constitution of India read with sections. 520 and 561-A of Criminal Procedure Code was misconceived and was not maintainable in law and hence it should be dismissed on that ground alone. It was also assented therein that the petitioner was not the owner of the truck but was merely a hirer thereof and in fact it was the respondent-company who was its owner. The petitioner had only taken this truck from the respondent company on hire-purchase system under the agreement dated 12th February, 1961 duly executed by him with His guarantor Shri Sat Parkash, a copy of which is at annexure R. 1. According to clause 3 of that agreement, if the hirer performs all the terms of the agreement and paid to the answering respondent-company monthly hire money by Way of rent as mentioned in schedule "A" to the agreement and all other sums due from him the hiring was to come to an end. It was only then that at the option of the hirer, the vehicle was to become his property, but until such payments were made to the company, the vehicle was to remain the property of the owner i.e. respondent No. 1. It was also averred that the petitioner did not pay the hire installments according to the terms of the agreement and by virtue of clause 16 of the agreement mentioned above the respondent company took possession of the truck on 10th May, 1962 and served a notice dated 9th October, 1962 (copy of which is at annexure R. 2) on the petitioner calling upon him to pay to the respondent-company the over-due hire money amounting to Rs. 17797.66 NP,

which was then due from the petitioner to the respondent. In reply to the said notice the petitioner sent a reply through his counsel dated 19th January, 1963, a copy of which is at annexure R. 3. Respondent No. 1 exercised their right under the said hire-purchase agreement and being owners of the said truck hired it out to One S. Harbans Singh and the requisite information was conveyed to the Registering Authority Delhi on 28th November, 1962. It was also asserted that as the respondent-company was the owner of, the truck in question, its possession was rightly given to the company through Shri Sardari Lal Anand. It was then averred that the petitioner had moved the Civil Court at Delhi regarding the return of the truck. This petition was, therefore, not maintainable in law and on this ground it should be dismissed. Under the circumstances respondent No. 1 prayed that in the interest of justice and equity the petition which was misconceived, may be dismissed. Respondent No. 2 had also put in written statement.

3. The learned counsel for the petitioner submitted that according to the provisions of section 517 of Criminal Procedure Code the Additional District Magistrate" was bound to make an order for the disposal of the truck in question after the trial in the case was concluded, and as the truck in question was taken by the police from the petitioner's possession, the Court was bound to make an order delivering the same to the petitioner. The wording of section 517 of Criminal Procedure Code, however, do not make it obligatory on the Court at the time of disposing of the trial or revision to make such an order. Section 517 of Criminal procedure Code is in these, terms :

* * Court may make such order as 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 or document produced before it or in its custody or regarding "which any offence appears to have been committed, or which has been used for the commission of any offence.

In some cases it is difficult for a Criminal Court, to pass an order for delivery of the property to a party u/s 517 of Criminal Procedure Code and the parties are then left to go to the Civil Court to get their rights determined. Respondent No."s 1 counsel submitted that the order u/s 517 of Criminal Procedure Code was made by the Additional District Magistrate on 20th April, 1963 on the application of the petitioner. This application was made by the petitioner on 20th April, 1963 requesting the Additional District Magistrate to pass an order u/s 517 of Criminal Procedure Code. The Additional District Magistrate then on this application passed the following order-

Present petitioner with his counsel. My predecessor passed the order judicially giving the truck to the other party. I cannot review this order. The petitioner advised to move the Hon"ble High Court for the needful.

The counsel maintained that this order, whether it was good, bad or indifferent, the remedy for the petitioner was to file an appeal against it as required u/s 520

Criminal Procedure Code, but he has failed to do so. The petitioner therefore, cannot take advantage of the provisions of Article 227 or 226 of the Constitution of India and come to this Court in a writ. This contention appeared to be correct for more than one reasons. The provision to apply under Article 227 of the Constitution of India is a very special remedy and comes into play only in very exceptional cases and at any rate not in those cases where the remedy lies by way of appeal or revision. It was also contended by the respondent's counsel that in the present case the petitioner has not come into Court with clean hands and that he has suppressed material facts in the affidavit and also in the petition on which the rule was issued. In elucidating his point he submitted that the petitioner in his petition asserted that he was the owner although he was not, and that he had nowhere mentioned about the hire-purchase agreement between respondent No. 1-company and him. He has also not mentioned that there was an arbitration clause in the agreement and that the petitioner had already moved the Civil Court at Delhi for the revocation of the arbitration clause in the said agreement. He has also not referred to the provisions of the agreement by virtue of which the petitioner could only become owner of the truck if he had complied with the terms regarding payment of the instalments and other terms of the agreement. In support of his contention he cited *Mr. U.C. Rekhi v. Income Tax Officer* (1950) 2 P.L.R. 267, *Narain Dass v. State of Punjab* (1952) 54 P.L.R. 366, *Deptiylal v. Collector of Nilgris* AIR 1959 Mad. 460 and *S. Raghbir Singh v. The District Magistrate Delhi* (1963) 65 P.L.R. 1009. It was also contended by the respondent's counsel that no relief can be given under Articles 226 and 227 of the Constitution of India by way of writ when there are disputed questions of fact. In support of his contention he cited *Union of India v. T.R. Verma* 1957 S.C. 882 (b), *Moti Das v. S.P. Sahi* 1959 S.C. 942, *Ram Rattan v. Union of India* (1961) 63 P.L.R. 387, *Nibran Chandra v. Mahendra Nath* 1953 S.C. 1895 and *Satyanarayan v. Millikarjun* 1960 S.C. 137.

4. I think the arguments, supported by the authorities given above, put forth on behalf of respondent No. 1 have considerable force. This petition is, therefore, dismissed with costs. The proper remedy for the petitioner is to knock the door of the Civil Court and get the matter decided, if he so desires.