
(2022) 06 JH CK 0028

In the Jharkhand High Court

Case No : Writ Petition (Criminal) No. 138 Of 2022

Gulam Ansari @ Md. Gulam Ansari

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 16-06-2022

Acts Referred:

Citation : (2022) 06 JH CK 0028

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Farooque Ansari, Neil Abhijit Toppo

Final Decision : Allowed

Judgement

Sanjay Kumar Dwivedi , J

1. Heard Mr. Farooque Ansari, learned counsel for the petitioner and Mr. Neil Abhijit Toppo, learned counsel for the State.

2. Petitioner has preferred this petition for quashing of order dated 04.01.2022 passed in Ranka P.S.Case No.302/2021 passed by learned J.M Garhwa whereby he has rejected the prayer of the petitioner for release of the vehicle being registration No.JH14G-8294 and to further quash the order dated 22.02.2022 passed in Cr.Revision No.06 of 2022 whereby claim of the petitioner for release of the auto rickshaw/Tempo bearing aforesaid registration number has been rejected.

3. Ranka P.S.Case No.302/2021 was instituted against the driver of the said auto rickshaw alleging therein that on 13.11.2021 her husband has gone to village Kerba Kutti, PS Ramkanda for Barchheya and on the same day after Barchheya he was returning house and when he reached to village Manpur due to rash and negligent driving of the Driver of the Tempo bearing aforesaid number her husband fell down on the road from the Tempo and crushed his whole body by the said vehicle resulting her husband died during treatment. On these

backgrounds, the case was instituted.

4. Mr. Farooque Ansari, learned counsel for the petitioner submits that petitioner-owner filed an application for release of his vehicle before the learned trial court which was seized pursuant to accident and was lying in open field. He submits that the learned trial court vide order dated 4.1.2022 rejected the release application filed on behalf of the petitioner on the ground that no document in support of the insurance of the vehicle of the said date has been furnished by the petitioner. He submits that against the said order, the petitioner preferred Cr.Revision No.06 of 2022 which was rejected vide order dated 22.2.2022.

5. Mr. Farooque Ansari, learned counsel for the petitioner submits that Rule 6 of the Jharkhand Motor Accident Claims Tribunal, 2019 speaks that the vehicle can be released if the owner furnishes sufficient security to the satisfaction of the Court to pay compensation that may be awarded in a claim case arising out of such accident. He submits that Rule 6 of the said Rule has not been considered properly by the trial court as well as by the revisional court. He submits that since the vehicle in question is commercial one and lying in open field, no purpose will serve in keeping the vehicle deteriorated.

6. Mr. Neil Abhijit Toppo, learned counsel for the State opposes the prayer of Mr. Farooque Ansari, learned counsel for the petitioner and submits that there is no illegality in the impugned order as the revisional order has rightly been passed.

7. For the correct appreciation of the case, Rule 6 of the Jharkhand Motor Accident Claims Tribunal, 2019 is quoted here-in-below:

6.(1). No Court shall release a motor vehicle involved in an accident resulting in death of bodily injury or damage to property, when such vehicle is not covered by the policy of insurance against third party risks taken in the name of registered owner or when the registered owner fails to furnish copy of such insurance policy despite demand by investigating police officer, unless and until the registered owner furnishes sufficient security to the satisfaction of the court to pay compensation that may be awarded in a claim case arising out of such accident.

(2) Where the motor vehicle is not covered by a policy of insurance against third party risks, or when registered owner of the motor vehicle fails to furnish copy of such policy in circumstances mentioned in sub-rule (1), the motor vehicle shall be sold off in public auction by the magistrate having jurisdiction over the area where accident occurred, on expiry of three months of the vehicle being taken in possession by the investigating police officer, and proceeds thereof shall be deposited with the Claims Tribunal having jurisdiction over the area in question, within fifteen days for purpose of satisfying the compensation that may have been awarded, or may be awarded in a claim case arising out of such accident."

8. On perusal of the aforesaid Rule, it transpires that there is provision of release of the vehicle if the owner furnishes sufficient security to the satisfaction of the

Court to pay compensation that may be awarded in a claim case arising out of such accident.

9. Learned counsel for the petitioner submits at bar that the petitioner is ready to deposit the sufficient security/bond to the satisfaction of the Court for compensation which may arise after award passed in pending case, if any. Moreover, the vehicle in question is lying in open field and it will be deteriorated. Reference may be made to the case of "Sunderbhai Ambalal Desai Vs. State of Gujarat" reported in 2002 10 SCC 283 wherein paras 17 and 18 the Hon'ble Supreme Court has held as under:-

"17. In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles.

18. In case where the vehicle is not claimed by the accused, owner, or the insurance company or by a third person, then such vehicle may be ordered to be auctioned by the court. If the said vehicle is insured with the insurance company then the insurance company be informed by the 4 court to take possession of the vehicle which is not claimed by the owner or a third person. If the insurance company fails to take possession, the vehicles may be sold as per the direction of the court. The court would pass such order within a period of six months from the date of production of the said vehicle before the court. In any case, before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchnama should be prepared."

10. In view of the aforesaid facts, the impugned order dated 22.02.2022 passed in Criminal Revision No. 06/2022 by which the order dated 04.01.2022 passed in Ranka P.S.Case No.302/2021 passed by the Judicial Magistrate, Garhwa was confirmed, is hereby quashed. Consequently, order dated 04.01.2022 passed in Ranka P.S.Case No.302/2021 is also set-aside. The vehicle, in question shall be released in favour of the petitioner on his undertaking on the following terms and conditions:-

(i) The petitioner shall furnish sufficient security to the satisfaction of the court to pay compensation that may be awarded in a claim case arising out of such accident.

(ii) The petitioner shall furnish an indemnity bond to the satisfaction of the court below.

(iii) One of the surety must be a resident and owner of a commercial vehicle of District- Garhwa (Jharkhand).

(iv) That the petitioner shall not sale, mortgage or transfer the ownership of the vehicle on hire purchase agreement or mortgage or in any manner.

(v) He shall not change or tamper with the identification of the vehicle in any manner.

(vi) He shall produce the vehicle as and when directed by the Trial Court.

11. The trial court is at liberty to impose any other terms and conditions which the trial Court deems fit and proper.

12. Accordingly, this criminal miscellaneous petition [W.P.(Cr.) No.138 of 2022] stands allowed and disposed of.

13. I.A., if any, stands disposed of.