
(1973) 08 P&H CK 0017
In the Punjab And Haryana At Chandigarh

Ishar Singh

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 01-08-1973

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 435
Penal Code, 1860 (IPC) — Section 406, 420

Citation : (1974) CriLJ 231

Hon'ble Judges : Gurnam Singh, J

Bench : Single Bench

Judgement

Gurnam Singh, J.—Truck No. P.N.E. 5431 was owned by Ishar Singh, the present petitioner. It is alleged that S. Lachhman Singh respondent, purchased one half share of the truck by means of an affidavit on payment of Rs. 14,000/- to the petitioner. He (Lachhman Singh) got registered a case under Sections 420 and 406, Indian Penal Code, at police station Kharar against Ishar Singh for misappropriation and cheating, Ishar Singh was arrested by the police and the truck was also taken into possession. Both Ishar Singh and Lachhman Singh filed applications in the Court of the Judicial Magistrate 1st Class, Kharar, for the restoration of the truck, but their applications were dismissed. Ishar Singh has filed Criminal Misc. Application No. 45-M of 1973 for setting aside the order passed by the learned Magistrate and to release the truck in his favour on Suparddari.

2. The learned Counsel for the petitioner contended that as the truck is registered in the name of Ishar Singh so he is entitled to the custody of the same.

3. Shri R. L. Garg, counsel for respondent No. 3 raised a preliminary objection that this petition is not maintainable, as the petitioner could file a revision against the order of the Magistrate in the Court of Sessions Judge.

4. The petitioner has come to this Court u/s 561-A, Criminal Procedure Code, and in para, 8 of the petition, it is alleged that by the order of the learned Magistrate failure of justice has been occasioned and the petitioner has no remedy except to

approach this Court by way of this petition.

5. The power u/s 561-A, Criminal Procedure Code, has to be exercised sparingly, carefully and with caution and only where such exercise is justified. Section 561-A, Criminal Procedure Code, cannot be invoked to override an express provision of law. It also cannot be invoked contrary to the procedure expressly provided by the Criminal Procedure Code. An order passed by the subordinate Court can be quashed to prevent the abuse of process of any Court or otherwise to secure the ends of justice. Ordinarily criminal proceedings against the accused person must be taken under the provisions of the Criminal Procedure Code and the High Court will be reluctant to interfere with the said proceedings at any interlocutory stage.

6. The truck in dispute was a case property and the trial Magistrate was competent to make such order as he thought fit for its proper custody u/s 516-A, Criminal Procedure Code, pending conclusion of the trial. u/s 435, Criminal Procedure Code, the High Court or the Sessions Court or District Magistrate or any Sub-divisional Magistrate is empowered to call for and examine the record of any proceedings before any inferior Court and satisfy himself as to the correctness, legality or propriety of any order passed by the Magistrate. This is a supervisory jurisdiction of the superior Criminal Court in order to correct miscarriage of justice. If the petitioner was not satisfied with the order passed by the learned Magistrate, he could file a revision against the same in the Court of Session and as that remedy was open to him, he could not invoke the powers of the High Court u/s 561-A, Criminal Procedure Code, because where there are express provisions of law, there is no inherent power in the High Court to override them. The inherent power cannot be exercised by the High Court in a manner which will be contrary to or different from the procedure expressly provided for the Court under the Criminal Procedure Code. It is thus evident that the remedy to the petitioner against the order of the learned Magistrate was covered under the provisions of the Code of Criminal Procedure. It is not a case where there was any legal bar against the institution of the criminal proceedings against the petitioner or that no case was made out against him on the allegations made in the first information report. As such, it is not a case in which the inherent powers of the High Court could be exercised. This petition is, therefore, dismissed with no order as to costs.