

(2013) 07 P&H CK 0703

In the Punjab And Haryana At Chandigarh

Case No : Criminal Revision No. 1718 of 2012 (O and M)

Lawar Singh

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 30-07-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 452, 457, 458, 459
Penal Code, 1860 (IPC) — Section 399, 402

Citation : (2013) 07 P&H CK 0703

Hon'ble Judges : Daya Chaudhary, J

Bench : Single Bench

Advocate : Jagjit Gill, for the Appellant; Pradeep Virk, D.A.G., Haryana, for the Respondent

Final Decision : Allowed

Judgement

Daya Chaudhary, J.—The present revision petition has been filed to challenge order dated 24.02.2012 passed by Additional Sessions Judge, Sirsa vide which, an application moved by the petitioner for release of original Registration Certificate (RC) of Car bearing registration No. DL8CA-7818 has been dismissed. Briefly the facts of the case are that the present petitioner is registered owner of aforesaid vehicle and the same was borrowed by one Ravi Kumar, who was arrested in case FIR No. 26 dated 08.03.2010, under Sections 399 and 402 IPC registered at Police Station Baragudha. Said vehicle was taken into custody by the Police. When it came to the notice of the petitioner, he filed an application for releasing the vehicle on superdari and the same was released on superdari. Said case was decided by the trial Court vide judgment dated 12.05.2011 and four accused persons namely, Jagseer Singh, Gurvinder Singh, Ravi Kumar and Vinod Kumar, were convicted and sentenced to the period already undergone. After decision of the said case, the petitioner moved an application for release of original RC of the Car, which was dismissed on 24.02.2012 and ordered confiscation of the Car. In pursuance of order dated 24.02.2012, the Car of the petitioner was taken into custody by the Police. Said order dated 24.02.2012 is

subject matter of challenge in the present revision petition.

2. Learned counsel for the petitioner submits that impugned order has been passed without any application of judicial mind as no order of confiscation was passed at the time of delivering judgment of conviction and order of sentence. The Car in dispute was already released on superdari as it belonged to a registered owner. Only on application for release of RC, order of confiscation was passed. Learned counsel for the petitioner also submits that the order of confiscation in the application is not maintainable as the same was to be passed at the time of passing of judgment of conviction. Learned counsel for the petitioner also submits that neither the order of confiscation was passed by the trial Court at the time of delivery of the judgment nor any separate order was passed and no proceedings of confiscation were initiated at any point of time. The accused have already been released on undergoing his sentence. The application of mind, while passing the order, is also clear from the fact that even the custody period has also not been mentioned.

3. Heard arguments of Learned counsel for the petitioner and have also perused the impugned order passed in the application as well as judgment of conviction.

4. Section 452 of Cr. P.C. provides for disposal of case property on conclusion of trial which is reproduced as under:-

452. Order for disposal of property at conclusion of trial.

(1) When an inquiry or trial in any Criminal Court is concluded, the 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.

(2) An order may be made under sub-section (1) for the delivery of any property to any person claiming to be entitled to the possession thereof, without any condition or on condition that he executes a bond, with or without sureties, to the satisfaction of the Court, engaging to restore such property to the Court if the order made under subsection (1) is modified or set aside on appeal or revision.

(3) A Court of Session may, instead of itself making an order under sub-section (1), direct the property to be delivered to the Chief Judicial Magistrate, who shall thereupon deal with it in the manner provided in Sections 457, 458 and 459.

(4) Except where the property is livestock or is subject to speedy and natural decay, or where a bond has been executed in pursuance of subsection (2), an order made under sub-section (1) shall not be carried out for two months, or when an appeal is presented, until such appeal has been disposed of.

(5) In this section, the term "property" includes, in the case of property

regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.

5. As per Section 452 Cr. P.C., the trial Court is to pass an order for disposal of property by destruction, confiscation or delivery to any person claiming possession being owner.

6. In the present case, neither any order for confiscation nor for delivery has been passed at the time of passing of judgment of conviction and while passing order of sentence, the accused have been sentenced to the period already undergone by them. Order passed in the application moved by the petitioner is contrary to provisions of Section 452 of the Code. Moreover the vehicle in dispute was already released to the registered owner on superdari and RC was not released. The application was moved for release for RC and order of confiscation of the vehicle has been passed. The order passed in the application is not only contrary to the provisions of the Section 452 Cr. P.C. but without any application of mind as no order has been passed for disposal of case property. The impugned order is not only contrary to law/provisions but is also without any application of mind which is liable to be set aside. Accordingly, the present petition is allowed and trial Court is directed to release the Car as well as its Registration Certificate to the petitioner within a period of one week from the date of receipt of copy of the order after verification of the documents and other particulars regarding ownership, if required.