

(2003) 05 P&H CK 0002

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 14691-M of 2002

Nafe Singh

APPELLANT

Vs

Devender Kumar

RESPONDENT

Date of Decision : 22-05-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2003) 9 CriminalCC 588 : (2004) 1 RCR(Criminal) 987

Hon'ble Judges : S.S. Saron, J

Bench : Single Bench

Advocate : Ravi Kiran Dahiya, for the Appellant; I.S. Balhara, for the Respondent

Final Decision : Allowed

Judgement

S.S. Saron, J.—This criminal misc. petition u/s 482 of the Code of Criminal Procedure (Cr.P.C. for short) has been filed against the order dated 26.3.2002 passed by the learned Additional Sessions Judge, Jhajjar, whereby the order dated 28.11.2001 of the learned Sub Divisional Judicial Magistrate, Bahadurgarh, directing the release of truck No. HR-46-A-6723 on superdari in favour of the petition, has been set aside.

2. The petitioner filed a private complaint against Jagdish (respondent No. 3) and Surajbir (respondent No. 4) and four other persons on the allegations that he is the owner of Truck No. HR-46A/6723 which he purchased in the year 1999. For the purchase of the said truck the petitioner took a loan of Rs. 5,20,000/- from M/s Tata Finance Ltd. New Delhi (respondent No. 2). The balance amount was paid by him from his own resources. For the purposes of the loan, Jagdish (respondent No. 3) stood as guarantor. It is alleged that on 23.6.2000 at about 8.30-9.00 p.m. at the exit door of H.N.G. Glass Factory, Bahadurgarh, the accused (respondent Nos. 1 and 2) alongwith our other persons forcibly took the truck from Dalbir Singh son of the petitioner and Ravinder. They also took possession of the documents including Insurance, Permit and Registration copy, besides snatching a sum of Rs. 5311/-. The petitioner is stated to have reported

the matter to the police and also made a written complaint on 24.7.2000. Besides, several representations to the higher authorities were made but to no avail. The Station House Officer, Police Station, City Bahadurgarh, maintained that the accused have shown him documents of sale of truck and he was satisfied that they were lawful owners of the vehicle in question. The petitioner had also filed a civil suit for mandatory injunction in the Civil Court at Rohtak on 26.7.2001 against Jagdish (respondent No. 3) and Surajbir (respondent No. 4) for mandatory injunction directing the defendants in the said suit to hand over the custody of the Truck to him. The learned Sub Divisional Judicial Magistrate, Bahadurgarh sent the criminal complaint for investigation to the police. The police took the custody of the truck on 17.7.2002 and the petitioner moved an application for release of the truck on superdari in his favour. Devender Kumar (respondent No. 1) also moved an application for release of the truck on superdari in his favour.

3. Devender Kumar (respondent No. 1) took the stand that he had purchased the vehicle in question from the petitioner and in this respect an agreement dated 23.6.2000 was duly executed between the parties, which was duly attested by the Notary Public, Rohtak. As per the terms and conditions, a sum of Rs. 3,25,000/- was to be paid at the time of delivery of the vehicle and the remaining instalments to the Finance company were to be paid by him (Devender Kumar). Accordingly, he has been making the payments of the instalments due to the finance company and till date he had paid 17 instalments of the remaining amounts. The receipts were issued in favour of the petitioner being the registered owner of the vehicle in question. Respondent No. 1 Devender Kumar further alleged that he being the purchaser of the vehicle in question has legal right and accordingly that the vehicle in question be released on superdari in his favour.

4. The learned Sub Divisional Judicial Magistrate, Bahadurgarh vide his order dated 28.11.2001 held that the petitioner Nafe Singh is entitled to get vehicle in question on superadari. It was also held that the finding recorded in the said order would not affect the disposal of the case on merits and the same shall be treated as subject to final adjudication of the title by the Civil Court. Accordingly, the applications of the petitioner and Devinder Kumar (respondent No. 1) were disposed of.

5. The respondent No. 1 Devender Kumar filed criminal revision petition against the order dated 28.11.2001 of the Sub Divisional Judicial Magistrate, Bahadurgarh on 1.12.2001 which was allowed by the learned Additional Sessions Judge, Jhajjar, vide his order dated 26.3.2000 and it was ordered that the truck be released on superdari to Devender Kumar (Respondent No. 1) on his furnishing surety bonds in the sum of Rs. 5 lacs to indemnify the petitioner in case he fails to prove the execution of the agreement dated 23.6.2000 and payment of amount of Rs. 3,25,000/- and balance sale price to Tata Finance Ltd. (respondent No. 2) in instalments, before the Civil Court in the suit filed by Nafe Singh

(petitioner), if Devender Kumar (respondent No. 1) is impleaded as a party in that suit. Further it was directed to produce the truck before the Sub Divisional Judicial Magistrate, Bahadurgarh during the trial, if so required.

6. After passing of the said order by the learned Additional Sessions Judge on 26.3.2002, the petitioner filed an application under Order 23 Rule 1 (3) of the CPC in the Court of learned Civil Judge (Senior Division), Rohtak, and withdrew the suit with permission to file fresh one on the same cause of action, which was allowed vide order dated 26.8.2002. The petitioner accordingly filed the civil suit against Jagdish and Surajbir Singh (respondent Nos.2 and 3) as also respondent No. 1 Devender Kumar for declaration with consequential relief of mandatory injunction, the plaint of which is dated 7.9.2002 in the Court of Civil Judge (Senior Division), Rohtak. It was averred in the said suit that the agreement to sell dated 23.6.2000 was bogus and creates no right or title in favour of Devender Kumar (respondent No. 1) and that the petitioner never executed the said agreement to sell in favour of Devender Kumar (respondent No. 1) or anybody else. He had not sold the truck to anybody including defendants in the suit. The agreement to sell was stated to be the result of fraud committed by all the respondents with the intention to cheat the petitioner because the defendants had snatched the truck from his son at Bahadurgarh and then procured a false agreement to sell which amounted to cheating. The said suit is pending. However, in the present Criminal Misc. petition, as already noticed, the order dated 26.3.2002 of the learned Additional Sessions Judge, Jhajjar is assailed.

7. Shri Ravi Kiran Dahiya, Advocate, learned counsel for the petitioner has contended that the learned Sub Divisional Judicial Magistrate, Bahadurgarh had passed a just and reasonable order releasing the truck on superdari in favour of the petitioner. However, the learned Additional Sessions Judge, vide his impugned order grossly erred in setting aside the well reasoned order of the learned Sub Divisional Judicial Magistrate. It is contended that the accused had impersonated the petitioner and forged his signatures on the claim application from insurance company in which damage was caused to the truck by an accident while in possession of the accused and the Insurance Company on an application submitted by the petitioner had stopped payment. Besides, no agreement was executed by the petitioner in favour of any one and the agreement set up by the respondent No. 1 was a forged document and the learned Magistrate had appreciated the same and found that the photo copy of the agreement to sell dated 28.6.2000 showed it to be attested on 24.6.2000 and executed on 23.6.2000, which made the authenticity of the agreement to sell doubtful. Besides, the date 24.6.2000 was also observed to be tampered with. It is further contended that from the signatures on the document also it was apparent that the document was forged as it did not contain the signatures of the petitioner. Besides, there was no receipt issued by the petitioner, no sale letter and no affidavit had been executed by the petitioner. It is further contended that in October 2001, the vehicle was in possession of respondent

Nos. 1, 3 and 4 and on the Baiier of Vyapar Kar Vibhag, U.P. they had given a false declaration showing the petitioner as driver of the vehicle in question, which clearly shows the ill-intention of the respondents. The petitioner has also referred to a notice dated 21.3.2002 (Annexure P-2) which he received from M/s. Tata Finance Company regarding the payment of instalments being not paid regularly which he contends show him to be recorded the payment of instalments being not paid regularly which he contends show him to be recorded as owner of the vehicle. It is also contended that the vehicle was handed over to the petitioner after passing of the order dated 28.11.2001 by the learned Sub Divisional Judicial Magistrate. Revision against the said order was filed on 1.12.2001 and the order under revision was stayed and the possession of the vehicle was taken by him and now the possession of the vehicle is with respondent No. 1 (Devender Kumar). He, therefore, contends that the impugned order dated 26.3.2002 of the learned Additional Sessions Judge, Jhajjar, is liable to be set aside and the vehicle released in his favour on superdari.

8. In response Shri I.S. Balhara, learned counsel for the respondents contends that the matter is pending consideration before the Civil Court which is the competent Court to decide on the questions in issue. He has also referred to the certificate dated 17.7.2002 which he placed on record byway of Criminal Misc. No. 35211 of 2002. As per the said certificate dated 17.7.2002 issued by Mohinder Singh Sub Inspector, Police Station City Bahadurgarh, it has been certified that in the criminal complaint filed by the petitioner against Jagdish Singh (petitioner No. 3) and Surajbir Singh (Petitioner No. 4) sons of Tara Chand, truck No. HR-467A-6723 was taken in possession by the police and at that time the truck was in possession of Devender Kumar (respondent No. 1). Therefore, it is contended that the truck having been taken from the possession of respondent N j. 1, the petitioner is not entitled to release of the same in his favour on superdari and that the order of the learned Additional Sessions Judge, calls for no interference.

9. The petitioner by way of criminal misc. No. 1052 of 2003 has prayed for placing on record Annexures P-5 and P-6 which are the two alleged agreements dated 23.6.2000 in respect of the case property. Annexure P-5 is alleged to have been executed by the petitioner in favour of respondent No. 1 on 23.6.2000 which was attested by Notary Public, Rewari on 24.6.2000. Annexure P-6 is alleged to have executed by the petitioner in favour of one Suresh, vide which the same truck was sold. It is contended that both the above sale deeds ((sic) agreement to sell) are forged documents which are forged by the respondent No. 1 and by one Suresh, who is not a party to the present case. It is further highlighted that in Annexure P-5, the petitioner is stated to have sold the case property to respondent No. 1 Devender Kumar, on which Suresh Kumar son of Mange Ram and Balraj son of Dalip Singh had signed as witnesses. However, in Annexure P-6 the same truck is sold to Suresh and Balraj son of Dalip Singh and Surajbir son of Tara Chand are the witnesses. Both the sale deeds (agreements) are of the same date and are attested by same Notary Public. Thus both the sale deeds

((sic) agreement to sell) clearly show that order dated 26.3.2002 (Annexure P-4) passed by the learned Additional Sessions Judge, has caused grave miscarriage of justice and that respondent No. 1 was not really original owner of the case property.

10. I have given my thoughtful consideration to the respective contentions of the learned counsel appearing for the parties. In order to appreciate the rival contention of the parties the provisions of Section 451 Cr. P.C. which deal with custody and disposal of property pending trial may be noticed:-

451. Order for custody and disposal of property pending trial in certain cases- When any property is produced before any Criminal Court during an inquiry or trial the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

Explanation - For the purposes of this section, "property" includes-

(a) property of any kind or document which is produced before the Court or which is in its custody.

(b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence.

11. The perusal of the above shows that when any property is produced before a Criminal Court during the enquiry or trial, the Court may make such order as it thinks fit for the proper custody of the property pending the conclusion of the inquiry or trial and if the property is subject to speedy and natural decay or if it is otherwise expedient so to do, the Court may after recording such evidence as it thinks necessary, order it to be sold or disposed of. The scope of powers exercisable u/s 451 Cr.P.C. is of a summary nature which does not adjudicate upon the civil rights of the parties. However, the discretion of the court "making such order as it thinks fit" for the purposes of an order for the custody of property is to contain reasons. Besides an order which is likely to affect a party who is interested in the case property being entrusted on "superdari" during trial of the case on the prima facie finding of ownership is to be recorded after hearing both the parties in due compliance of the principles of natural justice.

12. In the case in hand, the property was produced before the learned Sub Divisional Judicial Magistrate. The learned Magistrate, after hearing the parties, noticed that the vehicle in question was recovered u/s 202 Cr.P.C. on the direction of the Court in the complaint titled Nafe Singh v. Jagdish. The report that was submitted in Court was that the Devender Kumar (respondent No. 1) had purchased the vehicle in question from Nafe Singh (Petitioner) and the same was standing in the premises of the police station.

However, the police reported that it had an objection if the vehicle was released

on superdari either to Devender Kumar (respondent No. 1) or to Nafe Singh (petitioner). What was noticed particularly by the learned Magistrate was that it was not disputed that Nafe Singh (petitioner) is the registered owner of the vehicle in question and the concerned documents such as registration certificate etc. were in his possession. Besides, Nafe Singh (petitioner) himself had made payment of instalments on 27.5.2000 and therefore, the presumption was liable to be drawn in his favour. No receipt had been tendered by Devender Kumar (respondent No. 1) showing his name so that presumption may be drawn that he has been making payment of the amount of instalments. It was also noticed that the perusal of the photocopy of the agreement to sell dated 28.6.2000 show that it was attested on 24.6.2000, executed on 12.2.2000 and, therefore, the authenticity of agreement to sell is doubtful. It was also observed that the date 24.6.2000 was tampered with. Primarily the learned Magistrate adjudicated on the position of the undisputed fact that Nafe Singh (petitioner) is recorded as the registered owner of the vehicle in question.

13. The said finding the observations of the learned Magistrate were upset by the learned Additional Sessions Judge, Jhajjar in terms of this impugned order dated 26.3.2002. It was observed that no universal law had been laid down by the Supreme Court and the High Courts that a vehicle seized by the police during investigation of a criminal case should invariably be released on "superdari" to the person in whose name the vehicle is registered. The learned Additional Sessions Judge relied on the police verification to the effect that an agreement had been executed between the petitioner and Devender Kumar (respondent No. 1) and held the latter to be the owner of the vehicle.

14. After-considering the evidence and material on record I am of the view that the conclusions reached at by the learned Additional Sessions Judge are not sound. In the absence of material to substantiate the ownership of the truck in favour of the respondent, it was not proper for the learned Additional Sessions Judge to upset the conclusions reached at by the learned Magistrate. In the absence of perversity or unreasonableness in the order of the Magistrate, the Additional Sessions Judge was not justified in interfering with the same. The fact that the registration certificate is in favour of the petitioner has been erroneously sidetracked by the Additional Sessions Judge. The registration certificate in favour of a person is an important determinative factor of ownership of the vehicle, keeping in view the limited scope of inquiry in a proceeding u/s 451 Cr.P.C.

15. The provisions of Section 2(30) of the Motor Vehicles Act, 1998 define "owner". The same read as under: -

Owner" means a person in whose name a motor vehicle stands registered and where such person is a minor the guardian of such minor and in relation to a motor vehicle which is the subject of a hire-purchase agreement or an agreement of lease or an agreement of hypothecation the person in possession of the vehicle under that agreement.

16. The above definition defines owner to mean person in whose name the motor vehicle stands registered and in the case of a hire-purchase agreement or an agreement of lease or hypothecation the person in possession of the vehicle under that agreement. The petitioner would be deemed to be an owner of the Truck as he has a hire-purchase agreement within the meaning Section 2(30) of the Act in his favour. Besides, while ordering the release of truck in favour of the petitioner, the learned Magistrate also held that the finding of the order was not to affect the disposal of the case on merit and the same shall be treated subject to the final adjudication of the title by the Civil Court. In somewhat similar circumstances the Hon'ble Supreme Court in *Manoj v. Shiram Transport Finance Ltd.*, 2002 (1) ACJ 688 (S.C.): 2002 (2) RCR (Cri) 730 upheld the order of release of the vehicle on superdari to the registered owner subject to decision of the civil Court. It was contended by the financier therein that in view of the pendency of the civil suit and the order of status quo passed therein, the Magistrate was not justified in passing the order granting vehicle in possession of the appellants therein. Their Lordships of the Supreme Court found no substance in the said contention as the Magistrate had categorically held in the order delivering possession of the property subject to any variation to be made by the civil Court and that if the financier was aggrieved by the order directing release of the vehicle in favour of appellant, who continued to be the registered owner of the vehicle, it was open for him to approach the civil Court in the pending civil suit for interference. The order of the High Court was set aside and that of the Magistrate was to be complied with.

17. In the case of *Rajendra Prasad v. State of Bihar*, 2002 (2) RCR (Cri) 812, the Supreme Court while considering the rival claims with regard to the vehicle lying in the police compound observed that it was not considering the rival version regarding the transactions relating to the vehicle but did not want the vehicle to remain in the compound of the police station exposed to heat and cold because the automobile was likely to be lost to all in such situation. To avert such a situation, the custody of the vehicle was temporarily given to the appellant therein who was the ostensible name-holder in the registration certificate. It was held that the custody of the vehicle with the appellant therein would be on behalf of the Court and the said arrangement was only till the stage when the Court passes the order regarding disposal of the property on the conclusion of the trial.

18. This Court in *Nagender Singh v. Jagjeevan Singh*, 2002 (1) CCC 300 (P&H) : 2001 (4) RCR (Cri.) 4, ordered the release of tractor in the said case on superdari to the complainant who was the original owner. The petitioner therein had asserted that transfer of the tractor in question was under the ownership of the petitioner therein which was registered in his name but later the ownership stood transferred to the respondent in the said case. A case had been registered on the complainant's allegation that the respondent had fabricated false documents and put a fake thumb impression of the complainant to get the tractor transferred in his name. This Court held that the Courts must assume that the complainant had not transferred the tractor in favour of the respondent

and on the basis of this assumption the complainant must be held to be not only original owner of the tractor but continuing to remain its owner until a decision is given by the trial Court in this regard.

19. In *Hardam Singh v. Vidya Sagar and Another*, 1974 Criminal Law Times 61, this Court considered the question regarding custody of vehicle pending criminal case and held that the person in whose name the vehicle stands registered is prima facie owner of the vehicle and is entitled to its custody. Besides, it was also held that the possession is not by itself a true criterion for granting u/s 516-A, Cr.P.C. (now Section 482) custody of a motor vehicle during the pendency of a criminal case. It is the person in -whose name the vehicle stands registered with the registering authority under the Motor Vehicles Act, is prima facie the owner of the same and is entitled to its custody unless any other person establishes his superior title or claim over it.

20. Therefore, from the above, it is evident that superdari or vehicle in proceedings u/s 451 Cr.P.C. should be given to the person who is prima facie found to be the owner of the vehicle or is an ostensible owner and this is normally to be determined from the fact as to in whose name the vehicle stands registered. The person in whose name the vehicle stands registered is prima facie the owner of the vehicle and therefore is entitled to its custody on superdari which is of course subject to the final decision of the criminal trial.

21. In the case in hand it is accepted even before the learned Additional Sessions Judge, that Nafe Singh (petitioner) had agreed to formally transfer the truck in the name of Devender Kumar (respondent No. 1) in the registration certificate after payment of entire balance sale consideration. From this it can be safely inferred that in fact the truck had not been registered in the name of Devender Kumar (respondent No. 1) with the Motor Vehicles Authorities and, therefore, Devender Kumar cannot be considered to be "owner" of the vehicle within the meaning of Section 2(30) of the Motor Vehicle Act, 1988. The agreements which are stated to have been executed by the petitioner have been disputed by him and he has stated them to be false besides he has also placed on record two separate agreements Annexures P-5 and P-6 showing transfer of the vehicle to two different persons i.e. Devender Kumar (respondent (No. 1) and the other in favour of one Suresh. In the present proceedings, it would not be proper to comment upon the said agreements as the same are subject matter of dispute before the learned Civil Court, which is the appropriate forum to resolve the disputed questions of fact after evidence has been led by the parties.

22. For the foregoing reasons the order dated 26.3.2002 of the learned Additional Sessions Judge, is, therefore, set aside and that of the learned Sub Divisional Judicial Magistrate, Bahadurgarh dated 28.11.2001 is restored. This would however be subject to the conditions as laid down by the Hon'ble Supreme Court in *Rajendra Prasad's case* (supra), which reads as follows:-

(a) The petitioner will produce the original registration certificate (as issued by

the transport authorities) if it is a "duplicate" he must obtain certificate from the authorities concerned that the duplicate certificate was issued from the office.

(b) The petitioner shall execute a bond in the sum of Rs. 2 lacs with two solvent sureties that he will produce the vehicle back in Court whenever required by the Court.

The petition is accordingly allowed in the above terms.