
(2017) 04 SHI CK 0115
In the High Court Of Himachal Pradesh
Case No : 240 of 2010

NAJAKAT ALI HASHMI

APPELLANT

Vs

STATE OF HIMACHAL PRADESH AND ANOTHER

RESPONDENT

Date of Decision : 27-04-2017

Acts Referred:

Code of Criminal Procedure, 1973, Section 482, Section 397, Section 401, Section 457 - Saving of inherent powers of High Court - Calling for records to exercise powers of revision - High Courts powers of revision - Procedure by police upon seizure of property
Indian Penal Code, 1860, Section 147, Section 149, Section 356 - Punishment for rioting - Every member of unlawful assembly guilty of offence committed in prosecution of common object - Assault or criminal force in attempt to commit theft of property carried by a person

Citation : (2017) 04 SHI CK 0115

Hon'ble Judges : Ajay Mohan Goel

Bench : Single Bench

Advocate : Imran Khan, Vikram Thakur, Parul Negi, Neeraj Gupta

Final Decision : Dismissed

Judgement

1. By way of this revision petition, the petitioner has challenged order dated 03.08.2010 passed by the Court of learned Judicial Magistrate 1st Class, Court No. 2, Paonta Sahib, whereby learned Court below while allowing Cr. M.A. No. 189/4 of 2010 filed by Ekant Garg (present respondent No. 2) under Section 457 of the Criminal Procedure Code, dismissed a similar application filed by the present petitioner, i.e. Cr. M.A. No. 188/4 of 2010.

2. Brief facts necessary for the adjudication of the present petition, as are borne out from the records of the case, are that two applications were filed before the learned Court below, i.e. one by the present petitioner and another by present respondent No. 2 for release of same bus bearing registration No. HP-17-9786, chassis No. 359350UTQ-016110, which was impounded by the police of Police

Station Paonta Sahib in connection with FIR No. 210, dated 17.06.2010, registered under Sections 356, 147 and 149 of the Indian Penal Code. Records further demonstrate that on 17.06.2010, complainant Rizwan Ali filed a complaint that he was employed as Conductor by Ekant Garg (applicant in Cr. M.A. No. 189/4 of 2010) and while the said bus was coming from Shimla to Paonta Sahib, accused Nazakat Ali (present petitioner), who was already present at Bus Stand, Paonta Sahib alongwith 20-25 persons, stopped the bus and forcibly boarded the same and snatched its documents. Further, as per the complainant, the petitioner misbehaved with him and assaulted him and forcibly obtained his signatures on certain papers and thereafter took forcible possession of the bus. On the basis of the said complaint filed by Rizwan Ali, FIR No. 210, dated 17.06.2010 was registered at Police Station Paonta Sahib and the possession of the bus was taken by the police vide a separate memo.

3. After seizure of the said vehicle, two applications were filed for custody of the same under Section 457 of the Criminal Procedure Code, i.e. one by the present petitioner and the other by present respondent No. 2. Case put forth by Ekant Garg (present respondent No. 2) in the application which was so filed by him before the learned Court below was that he had purchased the bus in question from its registered owner Nazakat Ali (present petitioner) on 05.05.1999 and had paid full and final payment qua the sale consideration of the same to its owner, who had executed an irrevocable power of attorney in his favour and had also executed a receipt confirming therein full and final receipt of consideration by Nazakat Ali from Ekant Garg. It was further the case of Ekant Garg that Nazakat Ali had handed over the possession of the bus in question alongwith route permit, Registration Certificate including Insurance to him and thereafter, he was owner of the vehicle in question. Further, as per him, vendor Nazakat Ali had also executed and sworn an affidavit dated 08.06.2001 in respect of having received full and final consideration of the bus in issue and handing over possession of the same to the vendee and had also given his no objection certificate for transfer of the vehicle in the name of vendee, i.e. Ekant Garg. Further as per Ekant Garg, Nazakat Ali had also executed Forms No. 29 and 30 in his favour for the purpose of transfer of ownership and for registration of the bus in the name of the vendee. It was further his case that since then, he was plying the bus as per time table allowed by RTO and he was also paying all the taxes regularly to the State of Himachal Pradesh. It was further his case that as per policy of the State of Himachal Pradesh, as the route permit of the bus was not transferable in the name of the applicant, for this reason, the bus could not be transferred in his name. As State of Himachal Pradesh subsequently changed the policy and declared that route permit could be transferred in favour of purchaser of bus on payment of `10,000/-, it was for this reason that when this fact came to the notice of Nazakat Ali, he with the help of unwanted elements and with malafide intention snatched the said bus from the driver and conductor and forcibly took possession of the same on 17.06.2010. Further, as per Ekant Garg, as he was owner of the vehicle in question, he was suffering huge loss on account of his not

being able to ply the bus and on these bases, he filed the application for release of bus on supurdari basis.

4. The application which was filed for release of the bus on supurdari before the learned Court below by the present petitioner was to the effect that he was registered owner of the bus in question, which stood impounded by the police pursuant to the abovementioned FIR and since the investigation in the above case was complete and the vehicle was no more required by the police, therefore, the same be released in his favour on supurdari.

5. Both these applications were disposed of by the learned Court below vide order dated 03.08.2010, which is under challenge by way of this revision petition.

6. It is pertinent to mention at this stage that though two applications were decided by the learned Court below vide its order dated 03.08.2010, however, the petitioner herein has only assailed the dismissal of his application by the learned Court below and no revision petition has been filed against the factum of the application of Ekant Garg having been allowed by the learned Court below. This is evident from the head note of the revision petition, which is being quoted hereinbelow as well as the reliefs prayed for which are also quoted hereinbelow: "CRIMINAL REVISION UNDER SECTION 397 READ WITH SECTION 401 AND 482 OF THE CODE OF CRIMINAL PROCEDURE AGAINST THE IMPUGNED ORDER DATED 3.8.2010 PASSED BY LD. JMIC, COURT NO. 2, PAONTA SAHIB, DISTRICT SIRMOUR, H.P. WHEREBY HE HAS DISMISSED APPLICATION OF THE PETITIONER UNDER SECTION 457 CR.P.C."

"It is, therefore, respectfully prayed:

(i) That this revision petition may kindly be allowed and the order dated 3.8.2010 passed by JMIC-II, Paonta Sahib in Cr. M.A. No. 184-4 of 2010 may kindly be set aside.

(ii) That the custody of the vehicle No. HP- 17-9786 may kindly be given to the petitioner.

(iii) Entire record of the case may kindly be summoned.

(iv) Any other relief which this Hon"ble Court deemed fit and proper in the facts and circumstances of the case may kindly be granted in favour of the applicant/complainant."

It is further pertinent to mention here that even Cr. M.A. number is wrongly mentioned in the relief clause.

7. Be that at it may, the fact of the matter remains that learned Court below while allowing the application filed by Ekant Garg for releasing bus in question on supurdari in his favour, dismissed a similar application which was filed by the present petitioner with the same prayer. While allowing the application filed by Ekant Garg and dismissing the application filed by the present petitioner what weighed with the learned Court below was that though Registration Certificate of

the bus was in the name of the present petitioner, however, investigation and perusal of documents recovered in the course of investigation revealed that the vehicle in question was sold by the present petitioner to respondent No. 2 for a sale consideration of Rs.5,45,000/-, which stood received by the present petitioner from respondent No. 2. Learned Court below also took note of the fact that present petitioner had executed an affidavit dated 08.06.2001 in favour of respondent No. 2 to the effect that he had received full and final consideration of the vehicle in question from Ekant Garg and he had no objection if the said vehicle was transferred in the name of respondent No. 2. Further, what weighed with the learned Court below was that the present petitioner had also filled in Forms No. 29 and 30 with regard to vehicle in question addressed to Registering Authority, Paonta Sahib for transfer of ownership of the vehicle in the name of Ekant Garg. On these basis, it was held by the learned Court below that the present petitioner could not be allowed to derive benefit of the fact that Registration Certificate of the vehicle in issue reflected his name as owner, because in fact he stood divested of his ownership rights of the vehicle in question the moment he executed an affidavit in favour of respondent No. 2 and receipt qua having received sale consideration of vehicle in question in favour of Ekant Garg. Learned Court below also held that there was substance in the contention of Ekant Garg that the vehicle in question was in fact in his possession and the same was forcibly snatched by the petitioner from its previous owner, on the basis of which, FIR No. 210 dated 17.06.2010 was registered. Learned Court below also held by relying upon the judgment of this Court in Sahrif Mohammad Vs. State of H.P., 2004(1) S.L.J.353 that seized property cannot be released in favour of the accused unless he had cleared himself of the accusations alleged against him or at least unless he satisfies the Court that the accusations against him are unfounded and the seizure is illegal. Learned Court below also held that in the instant case, Ekant Garg was owner in possession of the vehicle in question, which was proved on the basis of documents executed by the present petitioner in favour of Ekant Garg and it was the present petitioner who forcibly took possession of the vehicle in question. By relying upon the judgment of the Hon'ble Supreme Court in Vasantha Vishwanathan and others Vs. V.K. Elayalwar and others, AIR 2001 Supreme Court 3367, it was held by the learned Court below that sale of the vehicle in question was in fact complete in favour of Ekant Garg by the present petitioner. Learned Court below also held that the present petitioner had no locus to seek the custody of the vehicle and if there was any liability of the vehicle, the same was that of Ekant Garg. It was further held by the learned Court below that the terms and conditions of the sale of the vehicle could be enforced against Ekant Garg, but on these bases the custody of the vehicle could not be denied to him. Thereafter, learned Court below ordered the release of the bus in issue in favour of Ekant Garg alongwith its documents on his furnishing supurdari bond to the tune of Rs.5.5 lacs with one surety in the like amount on conditions as find mentioned in the impugned order, whereas application filed with the similar prayer by the present petitioner was dismissed.

8. Feeling aggrieved by the dismissal of his application, the present petitioner has filed this revision petition.

9. I have heard the learned counsel for the parties and have also gone through the records of the case as well as the order passed by the learned Court below.

10. A perusal of the records of the case demonstrate that the vehicle in issue was seized by the police on the basis of FIR No. 210 dated 17.06.2010 which was lodged at the Police Station by one Shri Nazakat Ali, who in his complaint so filed to the police had alleged that he was engaged as driver of bus bearing registration No. HP-17-9786 and while he was plying the said bus from Shimla to Paonta Sahib, the possession of the same was forcibly taken from him by the present petitioner with the help of 20-25 persons alongwith the documents of the vehicle. Perusal of the records further demonstrate that there is a Special Power of Attorney dated 05.05.1999 executed by the present petitioner, whereby he has appointed and constituted respondent No. 2 Ekant Garg to be his true and lawful attorney to do deeds and things pertaining to the management of vehicle No. HP-17-9786. There is also on record a receipt executed by the present petitioner, which is witnessed by one Sheetal Nath Dhiman and by one Ayaz Ahmed to the effect that the present petitioner has received an amount of `5,45,000/-, i.e. the settled price of bus bearing registration No. HP-17-9786 alongwith route permit No. P.ST.S.78-Reg/97 from Shri Ekant Garg, son of Shri Inder Pal Garg, resident of village Bhuppur, Tehsil Paonta Sahib, District Sirmaur. There is also an affidavit executed by the present petitioner on record dated 08.06.2001 to the effect that he had sold bus bearing registration No. HP-17-9786 in favour of respondent No. 2 and had received full and final consideration in lieu of the said sale from the purchaser and he has no objection in case the said bus was transferred in the name of purchaser. There are also on record Form No. 29 and Form No. 30, wherein it is mentioned that the present petitioner has sold his bus to respondent No. 2 Ekant Garg.

11. In view of the said material on record, it cannot be said that the findings returned by the learned Court below to the effect that the bus in issue in fact stood sold by the petitioner in favour of respondent No. 2 are perverse findings or are not borne out from the records of the case. On the contrary, the findings so returned by the learned Court below are duly substantiated from the evidence produced on record by respondent No. 2. During the course of arguments, learned counsel for the petitioner could not demonstrate as to what was the perversity with the findings so returned by the learned appellate Court. The entire contention of the learned counsel for the petitioner was that as the Registration Certificate was in the name of the petitioner, therefore, it was he who was entitled for the custody of bus on supurdari. I am afraid, there is no merit in the said contention of the learned counsel for the petitioner. Undoubtedly, the Registration Certificate is still in the name of the petitioner, however, there is ample evidence on record which demonstrates that not only bus in issue stands sold by him in favour of respondent No. 2, but he has also

received the entire sale consideration in lieu of the said sale and had also executed Special Power of Attorney and affidavit to this effect in favour of respondent No. 2 and had also filled in Forms No. 29 and 30 to facilitate the change of registration of the bus in issue from his name in favour of respondent No. 2. Even otherwise, by way of order which is under challenge, all that the learned Court below has done, is that it has released the bus on supurdari in favour of respondent No. 2. Keeping in view the fact that the said bus was taken into custody by the police on the basis of a complaint which was so filed by a person who was engaged as driver by respondent No. 2, who categorically stated that the possession of the bus was forcibly taken by the petitioner with the help of 20-25 persons and further keeping in view the fact that there is ample evidence on record which suggests that the said bus in fact stood sold by the petitioner in favour of respondent No. 2 and in lieu of the same, he has received full and final consideration from respondent No. 2, in my considered view, there is neither any illegality nor any perversity with the order so passed by the learned Court below vide which while dismissing the application so filed by the present petitioner to hand over the custody of the bus to him on supurdari, it has allowed a similar application filed by respondent No. 2.

12. In view of the above reasonings, as there is no merit in the present revision petition, the same is accordingly dismissed. Miscellaneous application(s), if any, stand disposed of.