(2013) 06 BOM CK 0136

In the Bombay High Court

Case No : Criminal Writ Petition No. 489 of 2011

Satish Dhanmal Sanghavi APPELLANT

Vs

State of Maharashtra and Another RESPONDENT

Date of Decision : 25-06-2013

Acts Referred:

Citation : (2013) 5 ABR 917 : (2014) ALLMR(Cri) 204

Hon'ble Judges : T.V. Nalawade, J

Bench : Single Bench

Advocate : S.G. Dodya, for the Appellant; S.B. Pulkundwar, Assistant Public Prosecutor for State and P.P. Chavan, for the Respondent

Final Decision : Dismissed

Judgement

T.V. Nalawade, J.—The proceeding is filed for challenging common order made by Judicial Magistrate, First Class, Jalgaon in M.C.A. Nos. 686/2010 and 694/2010 and also to challenge the common judgment delivered by Jalgaon Sessions Court in Criminal Revision Nos. 51/2011 and 55/2011. The revisions were filed against the aforesaid common order made by J.M.F.C. Both the sides are heard. The petitioner had taken loan from a Credit Society for purchasing Volvo bus No. MH-19/Y-4444. It is his case that he had repaid the entire loan amount, but the Credit Society had taken the custody of bus from him prior to that and Credit Society refused to give custody of vehicle to him. It is his case that he then gave report to police against Chairman and Directors of the Society and on the basis of report, the crime came to be registered for offences punishable under Sections 406, 420 etc. of Indian Penal Code. The said vehicle came to be attached in the crime and the petitioner filed M.C.A. No. 686 of 2010 for interim custody of the vehicle in the said crime before J.M.F.C. The Respondent No. 2 filed M.C.A. No. 694 of 2010 for similar relief. The Respondent No. 2 contended that he had purchased the vehicle from the petitioner. The J.M.F.C. allowed the application of Respondent No. 2 and rejected the application of petitioner.

2. It is the case of petitioner that he had deposited Rs. 25 lakhs the amount

which was due from him and after that, the Society ought to have handed over the custody of vehicle to him. It is his case that the Society misused some documents on which signatures were obtained by the Society at the time of giving of loan. It is his case that the documents like T.T. form etc. were signed by him at the time of taking loan.

3. The F.I.R. dated 2.12.2010 shows that the petitioner had admitted that the custody of vehicle was already taken over by the Credit Society. It is the case of Society and Respondent No. 2 that the bus was purchased by taking hypothecation loan by the petitioner and he had committed default in making repayment of the loan. It is contended that the custody of bus was taken over by Society and then the petitioner had talk with Respondent No. 2 and he agreed to sell the bus for consideration of Rs. 25 lakh. It is contended that for selling the vehicle, the petitioner applied to Society for permission. It is contended that on 13.8.2009 such permission was given by Society and then the transaction of sale was made on 14.8.2009. It is the case of Respondent No. 2 and Society that Respondent No. 2 deposited Rs. 25 lakh with Credit Society for the petitioner and then the documents were executed by the petitioner in favour of Respondent No. 2.

4. It is the case of Respondent No. 2 that when the transaction was made, the petitioner had misrepresented that there were no other dues as against the vehicle and he would clear the dues towards R.T.O. Office, if any. As there were dues in respect of R.T.O. Office, they refused to transfer the vehicle in the name of Respondent No. 2. It is the case of Respondent No. 2 that he gave report against the petitioner as false representation was made to him on 19.11.2010. It is contended that due to this development, the petitioner gave false report against Chairman and Directors of the Society. It is the case of Respondent No. 2 that in view of the record of transfer of vehicle, the property in vehicle had transferred to Respondent No. 2 and so, Respondent No. 2 was entitled to the custody of vehicle.

5. This Court has perused the copies of documents produced by both the sides. The record shows that the agreement of sale was executed by petitioner in favour of Respondent No. 2, which was written on stamp paper purchased on 13.8.2009. The amount of Rs. 25 lakh was agreed consideration. The petitioner had undertaken to pay all taxes payable to R.T.O. and other offices. The documents show that T.T. form and other documents, which are required for transfer of the registration in favour of purchaser, were handed over by petitioner to Respondent No. 2. There is copy of application given by petitioner to Credit Society in which he had informed that he was selling vehicle to Respondent No. 2 for clearing the dues of the Society. Copy of affidavit sworn in before Executive Magistrate by the petitioner shows that the entire consideration was already received by him and he had executed documents in favour of Respondent No. 2. The documents show that on 14.8.2009 these documents were executed in favour of Respondent No. 2 by the petitioner and on the same day, the payment

of Rs. 25 lakhs was made in the loan account of petitioner. The case of petitioner that he had already singed some documents when loan was taken, cannot be accepted in such a proceeding in view of the aforesaid circumstances as the documents were created after purchasing stamp paper on 13.8.2009. In view of the aforesaid record and circumstances and that F.I.R. was given after the period of more than one year, after creation of aforesaid documents, this Court holds that the Respondent No. 2 made out prima facie case, but the petitioner could not make out any case in his favour. It appears that police also gave report u/s 169 of Cr.P.C. in view of the aforesaid circumstances.

6. The learned counsel for Respondent No. 2 placed reliance on the case reported as Vasantha Viswanthan and Others Vs. V.K. Elayalwar and Others, . In this case, the Apex Court has discussed the provision of section 19 of the Sale of Goods Act and Section 31 of Motor Vehicles Act. The Apex Court has observed that the property in vehicle gets transferred in favour of the purchaser at the time intended by a party to contract for transfer u/s 19 of Sale of Goods Act. It is observed that the provisions of Motor Vehicles Act, 1939 simply prescribed procedure for entering the factum of transfer of registration certificate which is a act posterior to the transfer. Thus, it can be said that when the document of sale is executed and the custody whether directly or indirectly transfers to the purchaser, the property in goods, vehicle transfers to the purchaser. In view of this position of law, not much can be made out from the circumstance that in R.T.O. record, the vehicle was standing in the name of the petitioner.

7. The learned counsel for petitioner placed reliance on the case reported as Rajendra Prasad Vs. State of Bihar and Another, . In that case, in view of the facts of that case, the Apex Court directed to hand over the custody of vehicle to the person who was ostensible name-holder in the registration certificate. The facts and circumstances of each and every case are always different. They need to be considered while deciding the rights of party in respect of the interim custody of vehicle. The relevant facts of the present case are discussed and they are totally different. In the case cited for petitioner, the relevant facts are not mentioned.

8. For petitioner reliance was placed on one more case reported as Krishna Mohan Kul @ Nani Charan Kul and Another Vs. Pratima Maity and Others, . The Apex Court has made following observations:

In judging of the validity of transactions between persons standing in a confidential relation to each other, it is very material to see whether the person conferring a benefit on the other had competent and independent advice. The age or capacity of the person conferring the benefit and the nature of the benefit are of very great importance in such cases. It is always obligatory for the donor/ beneficiary under a document to prove due execution of the document in accordance with law, even dehors the reasonableness or otherwise of the transaction to avail of the benefit or claim rights under the document irrespective of the fact whether such party is the defendant or plaintiff before Court.

9. This Court has already discussed facts in respect of aforesaid contentions. Prima facie it does not look probable that the documents discussed by this Court were created when the loan was given to the petitioner. Thus, the reported case is also of no use to the petitioner. In the result, the petition stands dismissed.

