
(1988) 06 BOM CK 0003
In the Bombay High Court

Satnam Singh and Another	Vs	APPELLANT
The State of Maharashtra and Another		RESPONDENT

Date of Decision : 16-06-1988

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 452
Motor Vehicles Act, 1988 — Section 22

Citation : (1989) 1 ACC 47

Hon'ble Judges : G.G. Loney, J

Bench : Single Bench

Judgement

G.G. Loney, J.—The question of disposal of motor track after conclusion of the trial is involved in this revision. A truck bearing registration No. BYY 7071 was owned by non-applicant Onkarmal Dwarkadas. He entered into an agreement to sell the said truck for Rs. 23,500/- to the present applicants. A document came to be executed on 2-12-1974. As a part of consideration Rs. 4,000/- were paid to the owner by the applicants. It is stated that on the same date, the truck was given in possession of the applicants for its use. However, the owner Onkarmal filed a complaint alleging that his truck was forcibly taken by the accused on 26-4-1976 from Chikhli and therefore a prosecution was started against the applicants in the trial Court on a police report. After recording the evidence, the trial Court found that the accused have not committed any offence. The accused were said to be in possession of the truck on the basis of the agreement dated 2-12-1974. It is after the conclusion of the trial while passing the order of disposal of property that the learned Magistrate held that the said truck has now been in possession of the complainant, as per the interim order of the Court during the pendency of the prosecution is entitled to retain possession as he has not received the price of it from the accused persons. However, the trial Court observed that the proper remedy for the accused is to claim back the amount paid to the complainant by approaching the civil court. Ultimately, the trial Court allowed the possession of complainant Onkarmal as regards the aforesaid truck.

2. The accused preferred an appeal in the Sessions Court. The finding of the trial

Court regarding the disposal of the property was maintained by the Sessions Judge. In his order, the learned Sessions Judge has taken the view that the complainant is entitled to possess the property as the vehicle stands registered in his name in the records of registering authority. The Sessions Judge confirmed the order of the trial Court on the basis of the proposition of law that even though the accused are acquitted, the motor vehicle should be given to the person who is the owner of the property. The normal rule of retaining the property to the person who possessed it at the time of its seizure has been departed in view of the fact that the property in question is a motor vehicle. While taking this view, the learned Sessions Judge relied on two decisions (1) Issac Samuel Vs. State of Kerala and Another, and (2) Nandiram Vs. State of Gujarat and Others, . The Gujarat High Court in Nandiram's case has taken the view that:

...Section 22 of the Motor Vehicles Act makes the registration obligatory before any such motor vehicle could be driven either by the owner thereof or by some other person on his behalf. As provided therein, no person shall drive any motor vehicle and no owner of motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place for the purpose of carrying passengers or goods unless the vehicle is registered in accordance with this Chapter and the certificate of registration of the vehicle has not been suspended or cancelled and the vehicle carries a registration mark displayed in the prescribed manner. Section 24 then provides as to how registration has to be made. An application by or on behalf of the owner of a motor vehicle for registration shall be given in certain form set out in the Schedule and it shall contain certain information required therein. The proviso thereto then says that where a motor vehicle is jointly owned by more persons than one, the application shall be made by one of them on behalf of all the owners and such applicant shall be deemed to be the owner of the motor vehicle for the purposes of this Act. It is thereafter that the registration certificate is being issued. Such a registration certificate has been issued in favour of the complainant alone and nowhere does the name of accused No. 1 appear in respect thereof. Section 28 of the Act then says that such a certification of registration issued in respect of any such vehicle shall be effective throughout India. Then Section 31 of the Act provides for a transfer of ownership of any such vehicle. Where the ownership of any motor vehicle is transferred, the transferor shall, within fourteen days of the transfer, report the transfer to the registering authority and shall simultaneously send a copy of the said report to the transferee. Then Clause (b) says that the transferee shall, within thirty days of the transfer, report the transfer to the registering authority within whose jurisdiction he resides, and shall forward the certificate of registration to that registering authority together with the prescribed fee and a copy of the report received by him from the transferor in order that particulars of the transfer of ownership may be entered in the certificate of registration. It follows from the provisions referred to here above that the registration certificate is an essential necessity before any such motor

vehicle can be made use of and that any person in whose favour this certificate of registration is issued, obviously would be the owner thereof....

The Kerala High Court in Issac Samuel's case has taken the view that:

...The ordinary rule is that when the accused is acquitted, the property should be returned to the person from whom it is seized but this is not an invariable rule. When there are circumstances showing that the person concerned either has not claimed the property as his specifically or when there are no grounds to hold that the property could have belonged to the accused or the evidence in the case would show that the property belongs to the complainant, the Magistrate has certainly got a discretion to return the property to the complainant....

On the basis of the aforesaid two decisions, the appellate Court came to the conclusion that since the truck in question is registered in the name of the complainant, he is entitled to possession.

3. Shri Sirpurkar, the learned Counsel appearing for the applicants, has submitted that the trial Court as well as the appellate Court has given the finding that the truck in question was found in possession of the applicants-accused on the date of the incident i.e. on 26-4-1976. It has therefore been canvassed that from the date of agreement dated 2-12-1974 till 26-4-1976, the truck was in possession of the applicant coupled with the agreement Exhibit 87. According to Shri Sirpurkar, the orders made by the courts below are contrary to the principle that the property should be delivered to the person from whose possession it has been seized. Admittedly, the property has been seized from the possession of the applicants. However it is seen from the aforesaid decisions that in the case of disposal of a motor vehicle, the criterion is not the possession but the intendment of the property. Section 452 of the Criminal Procedure Code provides that the Court may make such orders as it thinks fit for the disposal or delivery to any person claiming to be entitled to possession thereof, any property before it which has been used for the commission of that offence. The provisions u/s 452 Cr. P.C. provide a discretion to the Magistrate while disposing the property after the conclusion of the trial. However, that discretion has to be used judicially. The Supreme Court in the case of Ram Parkash Sharma Vs. State of Haryana, , has taken a view that the question of release of property has to be decided on its own merits in each case and the discretion of the court has to be exercised after due consideration of the interests of justice including the prospective necessity of the production of the seized articles at the time of the trial. In a similar situation, the Andhra Pradesh High Court in the case of Kavaluri Sidda Reddy v. Bathala Rangaswamy Naidu and Anr. 1981 Cr. LJ. 1543 has also taken the view:

Where the article produced before the Court in a case is a motor vehicle (lorry in the instant case), the same should be released to the person in whose name the Registration Certificate and the way permits stand in preference to the rival claimant in view of the provisions of Motor Vehicles Act.

4. In the instant case, the discretion which a Magistrate has u/s 452 Cr.P.C. cannot be said to have been exercised judicially. The facts of this case show that in the agreement Exhibit 87 dated 2-12-1974 it was stipulated between the parties that the balance amount of the price of the truck was to be paid in monthly instalments by the accused persons at the rate of Rs. 1500/- per month from 7-12-1974. But the accused persons defaulted in payment of the balance amount and has not placed on record anything to show that they have paid the entire consideration as stated in Exhibit 87. There is on record the certificate of registration of the aforesaid truck issued by the R.T.O., Amravati. The truck was shown in the name of Surajmal Hurmal. Thereafter, the said truck came to be transferred in the name of Sitabai w/o Onkarmal Chamedia the present non-applicant on 1-4-1974. The entry is accordingly made in the registration certificate. Then, on 6-6-1974, the said truck came to be transferred in the name of M.P. Industrial Commercial Corporation Pvt. Ltd. That is the last entry showing the ownership of the truck. The road tax of the said truck also appears have been paid. The certificate of registration in respect of the truck in question was never shown in the name of the applicant. Thus, it is clear that the ownership of the truck never passed in favour of the applicants on the basis of Exhibit 87 the agreement in question. The appellate Court has also stated in the order that the M.P. Industrial Commercial Corporation Pvt. Ltd. which is shown as the owner of the truck, possessed it and sold it to the complainant on 2-3-1976. The other documents establish the fact that the complainant purchased and possessed the said truck on 2-3-1976. The documentary evidence on this point remains unchallenged. Thus, except the alleged possession by the applicants, there is no documentary evidence on record to show that they owned the truck and therefore, were entitled for its disposal in their favour.

5. Shri Sirpurkar further argued that there is no reason to depart from the normal rule of handing over the property to a person from whom it has been seized. From the number of decisions, it is clear that the said rule does not apply in relation to a motor vehicle which recognises the ownership of the vehicle on the basis of the certificate of registration under the Motor Vehicles" Act. In this view of the matter, I do not find that the discretion used by the learned trial Court and the appellate Court is in any way illegal or arbitrary. Both the courts have reached the finding of fact on the basis of oral and documentary evidence. I do not find any reason to interfere with the finding of fact in view of the peculiar facts of this case. Each case has to be decided on the basis of the facts in that case. The facts in this case show that the applicants were never the owners. They have not shown that they have paid the entire consideration of the truck to Onkarmal nor they have produced any documentary evidence except Exh. 87 to show that they were the legal owners of the truck.

6. In the result, I find no force in this revision application and therefore, it stands dismissed. Rule is discharged.