
(1985) 05 P&H CK 0017

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 7020-M of 1984

Shri Surinder Lal Dhari

APPELLANT

Vs

Raj Paul Gulati and another

RESPONDENT

Date of Decision : 03-05-1985

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 102, 482

Citation : (1985) 05 P&H CK 0017

Hon'ble Judges : M.M. Punchhi, J

Bench : Single Bench

Advocate : D.R. Puri, for the Appellant; Rohit Tandon Mr. H.S. Brar, Standing Counsel CHG. Admn. and Mr. P. Teji, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Punchhi, J.—Shri Jagroop Singh, Judicial Magistrate 1st Class, Chandigarh, purporting to exercise powers u/s 102, Code of Criminal Procedure, passed an order dated August 9, 1984, in relation to Premier Padmini car No. CHA-9058, placing in the custody of Rai Paul Gulati Respondent on his executing a superdaeinama in terms thereof. Surinder Lal Ohri, the Petitioner herein, being aggrieved against that order, has invoked the inherent powers of this Court u/s 482, Code of Criminal Procedure, terming the order of the learned Magistrate to be without jurisdiction.

2. The dispute between the parties arose in this manner. Gulati was a non-resident Indian in the years 1981-82. He had opened a nonresident external account with the Indian Overseas Bank, Sector 7. Chandigarh Deposits in the said account could be made by Gulati in terms of foreign exchange and withdrawals therefrom could be had in terms of Indian money. It appears that he sent cheque No. 589892 on January 16, 1982, for a sum of Rs. 72,000/- to Ohri drawn on his aforesaid account Ohri opened his own account and deposited the said cheque for credit therein on January 29, 1982. The same day he withdrew therefrom a sum of Rs. 71,942 98 by means of a cheque and despatched it to

the Premier Automobiles, Bombay, for purchase of a Premier Padmini car against foreign exchange. The car was released in the name of Gulati and was registered as such, but its delivery was taken over by Ohri under his signatures of on April 19, 1982. As alleged by Ohri car throughout remained with him till August 2, 1984, when the Chandigarh police took it into possession. On that day, the Chandigarh police had before them two cross complaints of Gulati and Ohri laying claim to the car. Whereas Gulati's case was that he was the registered owner of the car and the car belonged to him, the case of Ohri was that he was the rightful possessor of the car, for. it was in pledge with him for the return of Rs. 72,000/, which he had advanced in terms of Indian money to the attorney of Gulati for being spent on the construction of a house at Panchkula belonging to the wife of Gulati. On these counter claims the police was tentatively of the view that there was likelihood of broach of peace between the parties, for Gulati would try to have the ear at any costs and Ohri would try to dispose it of despite the registered owner being Gulati. In these circumstances, the car was taken possession of. The police then vide Daily Diary Report No. 43 dated August 2, 1984, arrived at the conclusions: (i) both the parties should approach the Court and obtain orders with regard to the car, (ii) there was no likelihood of breach of peace despite heat generated between the parties, and (iii) no cognizable offence seemed to have been committed.

3. The following day, on August 3, 1984, both parties filed applications before the learned Magistrate purporting to be u/s 457, Code of Criminal Procedure, asking for the delivery of the car. Repetitively, it may be noticed that Ohri claimed the possession of the oar on the basis that he had paid to Gulalti a sum of Rs. 72,000/ through Sari Niranjana Dass Pahuja, Proprietor, University Book Depot, Chandigarh, and as such till that payment was made to him, he was entitled to retain possession of the car. In the same manner, Gulati laid claim to the car being its registered owner. The payment of Rs. 72,000/- was denied by him through his counsel

4. The learned Magistrate required of Ohri to produce any document in support of his claim. No document was produced before the learned Magistrate Therefore, in that situation be opted in favour of releasing the car to Gulati, the registered owner And to allay the fears of Ohri that Gulati would sell or dispose of the same and thus security for the repayment of Rs. 72,000/- given as loan would stand washed off, the Court observed as follows:-

I, therefore, order that the car in question be given on Sapur-dari to Raj Pal Gulati on his executing a Sapurdari bond in the sum of Rs. 75,000/- undertaking to produce the car as and when directed by the Court, not to sell, gift or dispose it of in any other manner and to keep it road worthy and not to make any changes in it for a period of three years from today

5. While challenging the aforesaid order, Ohri has brought on record, firstly, a true copy of the delivery document Annexure P-1 showing that Ohri was delivered the car by the Premier Automobiles, and as averred by him on April 19,

1982. He has also brought in true copy of the letter, Annexure P-2, purporting to be written by Gulati to Pahuja on October 30, 1981, showing that there was some suggestion between the two going on about Gulati providing foreign exchange for the purchase of a fiat car. The letter also is reflective of some money being sent to Pahuja by Gulati and some reference to the house being constructed in which Gulati was interested. Lastly, a true copy of the certificate dated September 4, 1984. Annexure P-3, has been put in which purportedly is signed by Mr. Pahuja certifying that Ohri had paid a sum of Rs. 72,000/- i.e. Rs. 50,000/- in cash and Rs. 22,000/- by means of a cheque against cheque dated January, 17, 1982, drawn on the Indian Overseas Bank Sector 7, Chandigarh on non-resident account of Gulati. From this it was sought to be urged that a sum of Rs. 72,000/- had been paid to Gulati through Pahuja and which had been acknowledged by Pahuja to have been received. However, the original plea taken by Ohri before the learned Magistrate was given up and now it is asserted that the car was delivered to Ohri as owner and Rs. 72,000/- had been paid by him as price. It has further been suggested that all documents in that regard had been framed in such a manner so as to effectuate ultimately a sale in favour of Ohri about the car.

6. During the course of hearing, an affidavit was filed by Ohri that on October 14, 1981, a cheque for Rs. 22,000/- had been handed over to Pahuja, which was deposited by him in Gulati's account on October 16, 1981, reference of which has allegedly been made in Annexure P-3. The factum of Rs. 22,000/- by means of cheque issued by Ohri being deposited in the account of Gulati is not disputed by Gulati's Learned Counsel.

7. Mr. Puri, Learned Counsel for Ohri, strenuously urges that the learned Magistrate had no jurisdiction to deal with the car, for, Section 102, Code of Criminal Procedure, could not come into play. The section provides that any Police Officer may seize any property which may be alleged or suspected to have been stolen or which may be found under circumstances which creates suspicion of the commission of any offence. Further, when the police Officer acts in such manner, he is required to report forthwith the seizure to the Magistrate having jurisdiction, and then has to give effect to further orders of the Court as to the disposal of the same. Now here it is urged that the property could never be alleged or suspected to have been stolen or found in circumstances which created suspicion of the commission of any offence. Rather support is sought from Daily Diary Report No. 42 dated August 2, 1984, wherein the police has concluded that no cognizable offence has been found to have been committed in relation to the said car. It is, in these circumstances, that the entire proceedings before the Magistrate are termed by Ohri's Learned Counsel to be without jurisdiction. Support is sought from a number of reported decisions to contend that before any property is dealt u/s 102, Code of Criminal Procedure, it should squarely fall to be dealt with under that section. Of course, Learned Counsel for the Respondent disputes the proposition and urges that the Petitioner should not be granted any relief in exercise of the inherent powers of this Court, especially

when he was shifting stance with regard to the alleged connection he had with the car. It has been highlighted that the impugned order is grounded on the claim of Ohri that he held the possession of the car as a security for the repayment of loan, where as in the present petition he claims himself to be the owner thereof. He opposes the advancement of the claim of Ohri with regard to the ownership of the car because the learned Magistrate was not confronted ever with such a claim and thus it is maintained that there is nothing to correct in that order by means of this petition.

8. Having heard the Learned Counsel for the parties on the subject, I am of the view that a very narrow interpretation has been put by Ohri's Learned Counsel to the provisions of Section 102, Code of Criminal Procedure. The police has been given the statutory power to seize any property which may be found under circumstances which creates suspicion of the commission of any offence. The word "found" used therein it not to be understood as something reverse of "lost". The word "found" herein should ordinarily relate to a property which the police comes-by in the normal discharge of their duties. Now here two cross-contenders to the possession of the car had approached the police which gave occasion to the police to scrutinise their cross versions. It could well be that in relation to that car an offence suspectedly could have been committed. If Gulati's contention was right (not holding that it is right) that the car was in the hand of his agent Ohri, then wrongful retention of that car by Ohri after demand by Gulati would raise a suspicion that the offence of criminal misappropriation had come to be committed. And if Ohri was right that he was holding the car as pledge for repayment of his loan right from the beginning, then Gulati could be said to have by demanding the car attempted to commit the offence of cheating (though not holding it that way). So the police was well within its right to entertain a suspicion about the commission of any offence between the parties and to have come-by the car in question in the peculiar circumstances of the case. Once the police had seized the car, they had to report the seizure forthwith to the Magistrate having jurisdiction, await his orders, and then give effect to further orders of the Court as to the disposal of the same. The same course was chosen by the contending parties themselves and they brought to the notice of the learned Magistrate to adjudicate upon their claims. Having submitted to his jurisdiction, it is futile for any party, much less Ohri, to contend that the learned Magistrate had no jurisdiction to pass further orders with regard to the disposal of the car. Thus, I have no hesitation in holding that Section 102, Code of Criminal Procedure, was attracted in the circumstances, that the order of the learned Magistrate was within jurisdiction, that he had power to order further disposal of the car, but it still remains to be considered whether in the circumstances he should have delivered car to Gulati on the terms mentioned in his order.

9. The purchase money of the car was in Indian currency, though its source was foreign exchange. Price thereof was paid by cheque on January 29, 1982. Its possession was obtained on April 19, 1982. The cheque in foreign exchange for

the purchase of car had itself been written on January 16, 1982. But strangely the price of the car purported to have been acknowledged by Pahuja on September 4, 1984, in two kinds i.e. Rs. 50,000/- in cash and Rs. 22,000/- by means of a cheque, prima facie do not reveal as to on what dates were these payments made to Pahuja. However, payment by cheque of Rs. 22,000/- has now been sworn to be by cheque dated October 14, 1981, which was deposited in the account of Gulati on January 16, 1981. Thus, this payment of Rs. 22,000/- was made much earlier, even to the letter dated October 30, 1981 (copy Annexure P-2) which made mention of purchase of a Fiat car) and the actual purchase/delivery of car in January and April, 1982, respectively. It is by means of acknowledgement on Annexure P-3 alone that the cheque of Rs. 22,009/- is sought to be co-related to the future cheque of January 17, 1982, sent in foreign exchange by Gulati to Ohri. Earlier to that, there is no document forthcoming on the record to reveal as to what was the actual deal between Gulati and Ohri with regard to the car in question. Faced with this situation, Learned Counsel for Gulati, has candidly given out that he is prepared to return the sum of Rs. 22,000/- forthwith, though he is emphatic that the said sum was deposited in the account of Gulati without the latter's knowledge and even consent. And further Learned Counsel is sanguine that since this money has been credited to the account of Gulati, whether used for his benefit or not, he is legally and morally bound to pay the same and for which he has no hesitation. Learned Counsel for the Petitioner, however, does not accept the offer.

10. Having regard to the shifting stand adopted by Ohri in relation to the car, as also the scope of the jurisdiction u/s 482. Code of Criminal Procedure, I would order in the interest of justice a slight addition in the order of the learned Magistrate, inasmuch as Gulati shall pay in court by means of a demand draft a sum of Rs. 22,000/- within a period of three weeks from today, for the benefit of Ohri. It is upto Ohri to accept that draft or forsake it. It is also upto Ohri to move a Court of law to assert his right over the car, if any whether it be of pledge or of ownership. But subject to that decision of the Court, the car shall remain on superdari bond with Gulati for the said period of three years, as originally ordered, but capable of being extended from time to time as the situation may warrant. In case the demand draft is not deposited in Court, the superdari bond shall be taken to be cancelled.

11. With these few modifications in the order, which have been made in the interest of justice, there is no further reason to cause Interference in the impugned order. Accordingly this petition is dismissed. Nothing said herein, however, would affect the merits of the dispute between the parties if it goes to a regular Court of law.