
(1988) 04 GAU CK 0013
In the Gauhati High Court
Case No : Criminal Revision No. 415 of 1987

Shri Swapan Dam

APPELLANT

Vs

Shri Golap Chand Gupta and Another

RESPONDENT

Date of Decision : 12-04-1988

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397(3), 451, 482
Penal Code, 1860 (IPC) — Section 397

Citation : (1988) 1 GLR 459

Hon'ble Judges : S.N. Phukan, J

Bench : Single Bench

Advocate : G.N. Sahewalla and A.K. Goswami, for the Appellant; G. Uzir, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Phukan, J.—The present dispute is regarding custody of a truck bearing registration No. NIM 3693 which was seized by police on the basis of the FIR u/s 397 IPC filed by opposite party No. 1. Admittedly the truck in question was purchased by the Petitioner by taking a loan from the United Bank of India and opposite party No. 1 was the guarantor. An agreement was entered into on 6.3.87 between the Petitioner and the opposite party No. 1 and under the terms of the said agreement the Petitioner agreed to sell the truck in question to the opposite party No. 1 subject to the conditions stated in the said agreement. It is alleged that this agreement was revoked by another agreement dated 22nd March, 1987 and under the new agreement the opposite party No. 1 was given custody of the truck of hire basis and also on the condition that the opposite party No. 1 shall pay a sum of Rs. 18,000/- to the bank toward liquidation of the loan. The present FIR was filed by the opposite party No. 1 alleging that Shankar Das, the brother of the present Petitioner took away the truck in question from the custody of the opposite party No. 2. Both the party claimed custody of the truck before the learned trial Court and the Chief Judicial Magistrate, Jorhat by the order dated 3.8.87 allowed the prayer of the opposite party No. 1 for custody of

the vehicle on execution of a bond for Rs. 3,00,000/- if production of the vehicle. An abortive revision petition willed before the learned Sessions Judge, Jorhat. In view of the bar contained in Sub-section (3) of Section 397 Code of Criminal Procedure the Petitioner has approached this Court u/s 482 Code of Criminal Procedure against the impugned order dated 6.11.87 passed by the learn Sessions Judge, Jorhat in Criminal Revision No. 46/87.

2. Mr. Uzir, learned Counsel for the opposite party No. has submitted that this is not a fit case for invoking inhere powers of this Court u/s 482 Code of Criminal Procedure. The Legislature has conferred inherent powers on this Court u/s 482 Code of Criminal Procedure only to prevent abuse of the process of any Court or to secure ends of justice. This power should be used sparingly with circumspection and in rare cases and to correct patent illegalities.

3. The truck in question was seized by police and it was produced before the learned Court, and as such, Section 451 Code of Criminal Procedure is attracted. This Section empowers the learned Court to make such order as it thinks fit for proper custody of such property pending conclusion of the enquiry or trial. Thus it appears that the order of the learned Chief Judicial Magistrate Jorhat was passed under this Section which was within his jurisdiction and the said order was only an interim arrangement. The learned Chief Judicial Magistrate by giving adequate and proper reasons and by an elaborate order has given the custody of the vehicle to the opposite party No. 2. The learned Sessions Judge also considered the matter in depth and rejected the revision petition as the learned Judge did not find any illegality in the order of the learned Chief Judicial Magistrate. As both the orders of the learned lower Courts were passed according to law after due consideration of the materials on record I do not think it fit and proper to use the inherent power of this Court for purpose of interfering with the said orders as, in my opinion, there was no abuse of process of law or any injustice caused to the Petitioner.

4. Learned Counsel for the Petitioner has simultaneously urged that as the Petitioner was the registered owner of the vehicle and under the Motor Vehicles Act he has legal liability regarding the said vehicle, the learned lower Courts committed an error by giving the custody of the vehicle to the opposite party No. 1. In support Mr. Sahewalla has placed reliance on decisions of various High Courts.

5. In Smt. Mahamaya Dasi Vs. Sanat Kumar Law and Others, the learned Single Judge while allowing the custody of the seized vehicle in favour of the registered owner held that motor car is a subject with regard to which there are specific provisions in statute enjoining certain obligation and non-performance thereto will bring the offender within the ambits of penalties provided for under the relevant Act and the Rules and that motor vehicles are not just ordinary "chattels personal" and the owner thereof has got rights as well as liabilities under the statute.

6. In *Hardam Singh Vs. Vidya Sagar and Another*, the learned Single Judge of Punjab and Haryana High Court held that 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 vehicle and is entitled to its custody unless any other person establishes his superior title of claim over it and that possession by itself does not establish title.

7. In *U. Kariyappa Vs. P. Sreekantaiah and Another*, learned Single Judge of the Karnataka High Court held that the Criminal Court while making an order of interim custody, as provided u/s 451 Code of Criminal Procedure has to enquire first of all, whether the person who claims for the interim custody of the vehicle seized, is a registered owner entitled to use the vehicle as required under the provision of Motor Vehicles Act and if he is such a person, then ordinarily he is the right and correct person to whom the custody of the vehicle has to be entrusted, (underlining mine). The learned Judge also held that while making an order for interim custody of a motor vehicle what the Criminal Court has to keep in view is who would be the best person to make use of the vehicle pending conclusion of the enquiry and trial.

8. This Court in *Kaushalya Devi Agarwala and Ors. v. Hari Prasad Agarwala and Ors.* 1981 Cri.L.J. NOC 101 (Part 2), held that certificate of registration of truck is a statutory document and the right which flows from registration is pertinent and the important element for disposal of question relating to custody u/s 151, Code of Criminal Procedure.

9. Situated thus, I am of the opinion, that in passing an order for custody of a motor vehicle u/s 451 Code of Criminal Procedure, the Court should not treat such vehicle as ordinary "chattels personal". Ordinarily the registered owner is the right and correct person to whom the custody of the vehicle has to be entrusted. However, the Court should also take into consideration while making an interim order for custody of a motor vehicle as to who would be the best person to make use of the vehicle pending conclusion of the enquiry and trial.

10. In the case in hand I find that the learned Chief Judicial Magistrate considered the document produced before the learned Court regarding the payment of instalments for liquidation of the loan and also the agreement between the parties. The learned Court observed that "There is a most important question of payment of the amount due to the bank and it seems to me that it is only Golap Chand who can make such payment..." The learned Court was conscious that the order passed u/s 451, Code of Criminal Procedure was an interim order as the dispute is of civil nature, and as such, the learned Court by the operative portion of the order, which is quoted below, made adequate safeguards for the parties:

In the result, the prayer of Golap Chand for custody of the vehicle is hereby allowed. He is to execute a bond of Rs. 3,00,000/- providing to produce the vehicle as and when called for by the Court and also to maintain the same under

reasonable and proper repairs preserving all relevant documents (duly countersigned by Court) and also regularly depositing the instalment to bank including making of payment of taxes to the appropriate authority etc.

11. Though ordinarily the Petitioner would have been entitled for interim custody of the vehicle considering the facts and circumstances of the case more particularly repayment of the loan to the bank and also the fact that the opposite party No. 1 was the guarantor for the loan taken by the Petitioner from the bank, I am of the opinion, that the order of the learned Chief Judicial Magistrate which was affirmed by the learned Sessions Judge was validly and legally made. That part the learned lower Courts have rightly directed the parties to establish their claim in the Civil Court.

12. Under the above circumstances, I am not inclined to invoke the inherent jurisdiction of this Court for interfering with the above order.

In the result, the petition is dismissed.