
(2007) 04 JH CK 0060
In the Jharkhand High Court

Smt. Mamta Devi and Another	Vs	APPELLANT
The State of Jharkhand and Others		RESPONDENT

Date of Decision : 09-04-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21
Motor Vehicles Act, 1988 — Section 119, 122, 130, 177, 192

Citation : (2008) 3 JCR 671

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Narendra Nath Tiwari, J.—In this writ petition, the petitioners, inter alia, have prayed for release of the vehicle belonging to Petitioner No. 1, which has been allegedly seized in colourable exercise of power without any legal basis by Respondent Nos. 5 and 6, for compensation @ Rs. 1,000/- per day from the date of seizure of the vehicle, compensation for causing mental agony to Petitioner No. 2 by implicating him in a false and malicious prosecution and for quashing the entire proceedings including the orders dated 5th September, 2005 and 9th September, 2005 in M-II Case No. 147 of 2005.

2. According to the petitioners, Petitioner No. 1 has been operating a Trekker, being Registration No. JH-01-E-9057. The petitioner No. 1 possessed the said vehicle by virtue of the agreement for sale dated 31st May, 2004 and power of attorney dated 2nd April, 2004 executed by the registered owner-Bimal Kumar. The said vehicle operates on Dhurwa-Ranchi route on hire basis.

3. On 12th August, 2005, the driver of the vehicle informed Petitioner No. 2 on telephone that the vehicle was seized by the Officer-in-charge (Traffic), namely, Jitendra Kumar, at Jail Chowk due to refusal of payment of illegal gratification.

4. Petitioner No. 2 went to the police station along with original documents and requested Respondent Nos. 5 and 6 to release the vehicle. The said respondents

demanded a sum of Rs. 800/- for releasing the vehicle. Petitioner No. 2 did not comply with the said illegal condition. He was then allegedly threatened with dire consequences, including implication in criminal case and causing damage to the vehicle.

5. The petitioner No. 2, thereafter, tried to move the Executive Magistrate (Traffic Special)-Respondent No. 7, but on that day, he was not available.

6. The petitioner No. 2 had to go on a religious trip to Deoghar and as such, he could not take any further step then. After coming back from the trip, he could obtain the offence report and found that the report is against him and he has been falsely implicated in the case. The petitioner No. 2 is neither the driver nor the registered owner of the vehicle. He is a practicing advocate of this Court. No case at all is made out against him under the Motor Vehicles Act.

7. Since Petitioner No. 2 was made an accused, he filed an application on 5th September, 2005 for release of the vehicle before the Executive Magistrate, (Traffic Special), Ranchi, Respondent No. 7.

8. The said respondent examined all the documents, including Registration Certificate, Fitness Certificate, Insurance Certificate, Tax Token Permit, Driving License of the driver, which were produced in original and the same were found in order.

9. The registered owner of the vehicle, Binod Kumar, who had entered into an agreement with Petitioner No. 1, also filed his affidavit to support the petition for release of the vehicle. But in spite of the same, no order was passed.

10. The petitioners alleged that the said apathy of Respondent No. 7 was at the behest of Respondent Nos. 5 and 6, who wanted illegal gratification from the petitioners, which is their usual practice at Radium Road Chowk and Jail Chowk. The said conduct of the Respondent Nos. 5 and 6 was also highlighted and criticized by public and media.

11. It has been stated that though the respondents seized the vehicle with all accessories, they did not prepare the seizure list in accordance with law. According to the petitioners, the detention of the vehicle is absolutely illegal and Petitioner No. 2 has been implicated maliciously, which has caused loss of his prestige in society and mental agony and as such, the petitioners are entitled for the appropriate relief.

12. A counter affidavit has been filed on behalf of Respondent Nos. 5 and 6 denying the allegations made by the petitioners. It has been, inter alia, stated that the vehicle, being Registration No. JH-01-E-9057, was found parked in a "No Parking Zone" near Radium Road Chowk on 12th August, 2005. The Constable-Hir Baitha seized the vehicle and brought it to the police station. The vehicle was fined and the driver was asked to pay the fine, but he did not pay. On demand of the relevant document of the vehicle, the driver did not produce any document of the said vehicle. On the information given by the driver of the vehicle, Petitioner

No. 2 was contacted, but he also refused to pay the prescribed fine for parking the vehicle in a "No Parking Zone".

13. The vehicle was detained and the prosecution report dated 12th August, 2005 was sent to the competent court for initiating a proceeding under Sections 122 130 177, 66(i), 196 56/192 and 119/177 of the Motor Vehicles Act and Section 28 of the Taxation Act. Petitioner No. 2, however, refused to receive the seizure list and also directed the driver not to receive the same. It has been stated that the vehicle was fined two times earlier and was released on payment of fine.

14. It has been specifically stated that the vehicle is kept intact in good condition under the custody of the Traffic Police and the matter was forwarded to the competent court and the same cannot be released by the said respondents until and unless the release order is issued by the competent court. The respondents have refuted the allegations of malice or otherwise.

15. During the pendency of this writ petition, the petitioners alleged that after the seizure, the vehicle has been dismantled by the respondents. This Court by order dated 6th October, 2005 appointed Mr. A.K. Paul, Joint Registrar (Admn.-II) to inspect the vehicle and submit his report. The said Joint Registrar (Admn.-II) on inspection submitted his report. The relevant portion of the report reads as follows:

At a glance, the trekker was found to be intact. However, it was covered with dust. Out of four tyres, three appeared to be not touched. Though the fourth tyre was in place, but it appeared to be different in look and improperly fitted as one of the nuts was not in place and other four (sic) were loosely fitted. The bonnet was found in locked position. On my request, it was opened. I found the Engine and better/ in place. I noted down the Engine and chesis numbers, which I have mentioned above. Inside, all the seats were in its original contour. No extra seat cover was there. An extra tyre was found lying on the roof of the vehicle.

16. Mr. Rajiva Sharma, learned Senior Counsel, appearing on behalf of the petitioners, submitted that on perusal of the prosecution report, it is evident that Petitioner No. 2, who is a practicing advocate of this Court, is neither the registered owner nor was found driving the vehicle, but he has been illegally and maliciously implicated in the case. This false and malicious implication of the Petitioner No. 2 has caused him immense damage to his dignity, prestige and social standing for which he is entitled for due compensation. The false implication of the advocate also amounts to contempt of the Court.

17. Learned Counsel relied on a decision of this Court in the case of P.P.N. Roy v. State of Jharkhand and Ors. reported in 2005 (1) ECC 525 . It has been submitted that the vehicle has been detained for long time without any legal basis in violation of the provisions of Section 207 of the Motor Vehicles Act and the same as also of Articles 14, 19(1)(g) and 21 of the Constitution of India, depriving the Petitioner No. 1 of his livelihood. There was no justification for

detaining the vehicle by Respondent Nos. 5 and 6 without forwarding the matter to the competent court. Learned Counsel has also relied on a decision of the Supreme Court in the case of *Sunderbhai Ambalal Desai v. State of Gujrat* reported in 2003 (4) JUR 134 (SC) and submitted that the vehicle cannot be seized and detained for a longer period and the same should be released on appropriate bond and guarantee. Learned Counsel submitted that the power of seizure should be exercised with care and caution not casually and whimsically. Learned Counsel further relied on decision of the Supreme Court in the case of *State of Maharashtra and Others Vs. Nanded-Parbhani Z.L.B.M.V. Operator Sangh*, and submitted that the prosecution against Petitioner No. 1 is arbitrary and without any legal justification and that the Petitioner No. 2 is entitled for compensation. The respondents have illegally detained the vehicle for more than a year without any legal justification. This is a clear-cut case of police atrocity and encroachment upon the constitutional right of the petitioners with malicious intention. The petitioners are entitled to be indemnified for the loss and injuries suffered by them. Learned Counsel relied on a decision of the Supreme Court in the case of *Bhim Singh, MLA Vs. State of Jammu & Kashmir and Others*, and submitted that on the allegation of wrong parking, the respondent has no authority to seize and detain the vehicle. The allegations are not of leaving the vehicle in a dangerous position, using vehicle without registration or disobeying the traffic sign and as such no case is made out against the petitioners under Sections 122 130 177, 66(ii), 196 56/192 119 177 of the Motor Vehicles Act or Section 28 of the Taxation Act even if the allegations are accepted or proved.

18. Section 207 of the Motor Vehicles Act, 1988 provides for detention of vehicle only when the vehicle is used without licence, permit, certificate of registration etc. Section 130 of the said Act provides for duty to produce licence and certificate of registration on demand within 15 days.

19. It has been contended on behalf of the petitioners that the said documents were immediately produced before the respondents and as such, there was no occasion for demanding the documents. The respondents have no authority to seize and detain the vehicle. The petitioners are, thus, entitled for release of the vehicle and the quashing of criminal proceedings-initiated against them. They are entitled for due compensation for the loss and damages, as aforesaid. It has been submitted that the respondents have caused monetary loss @ Rs. 1,000/- per day and have also caused the loss of dignity and prestige of Petitioner No. 2 for which he is entitled to be compensated separately.

20. Mr. M.K. Laik, learned Senior Standing Counsel No. 1, appearing for the State, on the other hand, submitted that the petitioners' vehicle was found parked in "No Parking Zone" and was caught by the constable and the vehicle was brought to the police station. The driver failed to produce the required documents. The petitioners also did not produce the documents of the vehicle. The vehicle is still lying in the custody of the police. The petitioners instead of approaching this Court should have approached the appropriate authority Court/

Forum for the release of the vehicle.

21. Having carefully heard the learned Counsel and scrutinized the material on record, the following admitted facts emerged:

- i. The vehicle, in question, was seized and detained for parking the vehicle in a "No Parking Zone" and for not producing the original papers/ documents;
- ii. Petitioner No. 2 is neither the registered owner nor was found driving the said vehicle;
- iii. Petitioner No. 2 is a practicing advocate of this Court.
- iv. Petitioner No. 1 has been operating the vehicle on the basis of an agreement with the registered owner of the vehicle and on the basis of the terms of power of attorney.

22. Section 129A of the Motor Vehicles Act provides for power to the Police Officer to detain a vehicle used without certificate of registration and permit. The section runs thus:

129-A: Power to detain vehicles used without certificate of registration or permit-Any police officer authorized in this behalf or other person authorized in this behalf by the State Government may, if he has reason to believe that a motor vehicle has been or is being used in contravention of the provisions of Section 22 or without the permit required by Sub-section (2) of Section 42 or in contravention of any condition of such permit relating to the route on which or the area in which or the purpose for which the vehicle may be used, seize and detain the vehicle, and for this purpose take or cause to be taken any steps he may consider proper for the temporary safe custody of the vehicle. Provided that where any such officer or person has reason to believe that a motor vehicle has been or is being used without the permit required by Sub-section (1) of Section 42, he may, instead of seizing the vehicle, seize the certificate of registration of the vehicle and shall issue an acknowledgement in respect thereof. Provided further that where a motor vehicle has been seized and detained under this section for contravention of the provisions of Section 22, such vehicle shall not be released to the owner unless and until he produces a valid-certificate of registration under this Act in respect of that vehicle.

23. On Plain reading of the said section, it appears that the Police Officer or an authorized person has power to detain the vehicle where he has reason to believe that the motor vehicle has been or is being used in contravention of the provisions of Section 22 or is being used without any valid permit or is being used in contravention of any condition of such permit.

24. In the instant case, the reason for the seizure has been stated in Para-5 of the counter affidavit filed by Respondent No. 6, which reads as follows:

...It is further stated that the vehicle in question bearing registration number JH-0E-9057 was caught by constable 1058, Hir Baitha, when it was parked within

a "No Parking" zone near Radium Road on 12.8.05. The said constable along with the vehicle and its driver namely Mukhtar Ansari came to the Traffic Police Station for necessary action. On demand, the driver did not produce any document in connection with the said vehicle. However, on the basis of information given by the said driver, the owner (petitioner No. 2] was called for, but he refused to pay the prescribed fine for the offence committed under the Motor Vehicle Act nor did he produce any document in support of the vehicle. Thereafter, the said vehicle was seized in presence of the driver and its owner....

25. Admittedly, Petitioner No. 2 is neither the registered owner nor the driver of the vehicle. The vehicle was allegedly seized for not paying the fine by Petitioner No. 2 as also for not producing documents by him. Petitioner No. 2, who is not the owner, is not liable to pay the fine or to produce the documents. Petitioner No. 1, who has been operating the vehicle, was not given any notice for detaining the vehicle nor any notice was issued to the registered owner of the vehicle. The respondents have not produced any thing on record to show that any notice was issued to the Petitioner No. 1 for detaining/seizing the vehicle. The allegations made in the prosecution report also do not fall within the ambit of Section 129A of the Motor Vehicles Act nor any case under Sections 122 130 177, 66(ii) 196 56/192 119/177 of the Motor Vehicles Act or u/s 28 of the Taxation Act is made out even if the allegations are accepted. The respondents thus could not legally justify the seizure and detention of the vehicle and the prosecution against Petitioner No. 2.

26. Petitioner No. 1 claimed to have suffered loss due to the said illegal seizure and detention of the vehicle. Petitioner No. 2 has also established a case of his false implication in the instant criminal prosecution without any legal justification.

27. The seizure and detention of the vehicle, in question, and criminal proceedings against the petitioners in Case No. 2(8) of 2005, pending before the Executive Magistrate, Traffic Special, Ranchi, Respondent No. 7, could not be justified by the respondents, legally or factually. The said seizure and the criminal proceeding is, thus, sheer abuse of process of the Court and is not sustainable in the eye of law and are, hereby, quashed. The respondents are directed to release the vehicle, being Registration No. JH-01-E-9057, forthwith in favour of Petitioner No. 1, if not required in any other case. The Executive Magistrate, Traffic Special, Ranchi, Respondent No. 7, shall see that the vehicle is delivered to Petitioner No. 1 in good/proper condition, as is contended by Respondent No. 6 in his counter affidavit.

28. So far as the claim of compensation is concerned, the petitioners have claimed compensation on the ground of incurring loss @ Rs. 1,000/- per day. But no document and material is produced to substantiate the said extent of loss per day. However, as noticed and held above, the vehicle has been seized and detained illegally since August, 2005 and the petitioners have filed this writ petition immediately thereafter in the month of September, 2005. Since the matter could not be taken up and heard earlier by this Court, the respondents

only cannot be blamed and held liable for the period consumed in the legal proceeding. Considering the attending circumstances, the (sic) by the petitioners cannot be/(sic) However, the compensation is quantified to a sum of Rs. 20,000/- (rupees twenty thousand) only, payable to the petitioners by the respondents within a period of one month from the date of receipt/production of a copy of this order.

29. This writ petition is allowed with the said observations and directions.