

(2001) 05 CAL CK 0028
In the Calcutta High Court
Case No : C.R.R. No. 124 of 2001

Sri Kamalesh Kumar Thakur

APPELLANT

Vs

State of West Bengal and Another

RESPONDENT

Date of Decision : 25-05-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3)
Penal Code, 1860 (IPC) — Section 120B, 32, 34, 406, 420

Citation : (2001) 2 CALLT 490 : (2001) 3 CHN 780

Hon'ble Judges : Debi Prasad Sengupta, J

Bench : Single Bench

Advocate : Mr. Jaymalya Bagchi, for the Appellant; Md. Kasem Ali, Mr. Debasish Roy, for the Respondent

Final Decision : Allowed

Judgement

D.P. Sengupta, J.—The present revisional application is directed against an order dated 6.12.2000 passed by the learned Chief Metropolitan Magistrate, Calcutta in G.R. No. 34/2000 pending in the Court of learned Chief Metropolitan Magistrate. Calcutta.

2. Pursuant to a complaint lodged by the present petitioner u/s 156(3) Cr.PC. before the learned Chief Metropolitan Magistrate, Calcutta which was forwarded by the learned. Magistrate to the officer-in-charge Muchipara police station for investigation, a case was registered being Muchipara P.S. Case No. 2 dated 4.1.2000 u/s 406/420/467/ 468/471/120B and 34 of the Indian Penal Code.

3. The allegation made in the said First information Report is that the complainant's firm deals tn finance business and on 25.6.98 one Tapan Sarkar entered into a hire purchase agreement with the complainant's firm for purchasing a Taxi bearing Registration No. WMT 4631, Engine No. 6ED 029539 and Chassis No, 111 574716 on an initial payment of Rs. 70,001/-. The said Tapan Sarkar was required to pay a total amount of Rs. 2,12.0407- by way of 35 instalments. Tapan Sarkar time to time paid a sum of Rs. 57.040/- and thereafter

he became defaulter in making the payments. The complainant's firm issued a notice in the name of Tapan Sarkar. The complainant thereafter came to know that the said taxi (WMT 4631) Was illegally sold by Tapan Sarkar to one Subhendu Bose, The complainant further came to know that the body of the said taxi is lying in a garage owned by one Nara Mistry within the Jurisdiction of Kashba police station but no engine was found in the said body. The complainant came to know further that the engine of the said taxi (WMT-4631) was illegally installed in another car bearing No. WB 20-2963. Said Subhendu Bose sold out the said car being WB 20-2963 to the present opposite party No. 2 herein and the engine of the hire purchased taxi being WMT 4631 owned by the complainant is installed in the said car.

4. In course of investigation a prayer was made by the investigating officer before the learned Magistrate for seizure of vehicle No. WB 20-2963 in which the engine of the taxi bearing No. WMT-4631 has been illegally installed. Search warrant was issued by the learned Magistrate and pursuant to that the vehicle bearing No. WB 20-2963 and the body of the taxi bearing No. WMT 4631 (without engine) were seized by the police and the same was reported to the learned Magistrate on 7.1.2000. The learned Magistrate by his order dated 7.1.2000 directed the I.O. to retain the seized vehicle and directed him further to get the seized vehicles examined by Forensic Laboratory.

5. The present opposite party No. 2 herein filed an application before the learned Magistrate praying for return of the seized vehicle bearing No. WB 20-2963. The petitioner did not have any knowledge of filing such application by the present opposite party No. 2 and he did not get any opportunity to oppose the said prayer. The I.O. submitted a report before the learned Magistrate on 16.3.2000, wherein he opposed the prayer for return of the seized vehicle of the opposite party No. 2 on the ground that the Forensic Science Laboratory experts examined the engine of the seized vehicle (WB 20 2963) and came to a finding that the engine number has been tampered with badly and that the said engine actually bears No. 6ED 02 9539 which belongs to the taxi bearing Registration No. WMT 4631. It is submitted by the learned Advocate appearing for the petitioner that even inspite of such report submitted by police the learned Magistrate by an order dated 21.3.2000 directed to return of the seized vehicle bearing No. WB 20 2963 to the present opposite party No. 2.

6. The present petitioner thereafter filed an application on 28.3.2000 praying for return of seized taxi bearing No. WMT 4631 along with its engine and all accessories. A report was called for and the same was submitted by the police wherein it was categorically stated that after forensic laboratory's examination it was found that the engine installed in vehicle No. WB 20-2963 is a stolen one and belongs to the taxi bearing No. WMT 2963. The learned Advocate submits that inspite of such report the learned Magistrate by the impugned order dated 6.12.2000 rejected the prayer for return of the vehicle made by the petitioner on the ground that the question of changing the engine can only be decided during

trial.

7. In course of hearing of the present revisional application this Court directed the learned Advocate appearing for the State to produce the case diary and the same was produced by the learned Advocate of the State. I have carefully gone through the case diary which contains the report submitted by the Assistant Director, Forensic Science Laboratory, Government of West Bengal. On perusal of the said report it appears that an engine was found installed in a white Ambassador Car bearing no Registration Number plate and having its engine and chassis No. as 6ED 047263 and 11163 7691. It further appears from the said report that the engine number found on the engine block was badly tampered by filing hammering and after etching examination a new set of engine number could be deciphered as 6ED 02 9539. On the basis of such forensic report the police submitted report before the learned Magistrate stating that the engine installed in the Ambassador Car being No. WB 20 2963 is not the original and the same belongs to the taxi bearing No. WMT 4631.

8. I have carefully gone through the case diary which contains the report of the Forensic Science Laboratory and also of the investigating agency. I fail to understand how the learned Magistrate even despite of such report directed to return of the seized vehicle bearing No. WB 20-2963 in which the engine of the taxi No. WMT 4631 was installed, to the opposite party No. 2 herein. In my considered view the impugned order suffers from serious illegality. When prima facie it is found that the engine installed in the vehicle No. WB 20-2963 is not the original engine of the said vehicle and the same belongs to the taxi bearing No. WMT 4631, the learned Magistrate should not have directed to return of the seized vehicle in favour of the opposite party No. 2.

9. After hearing the learned Advocates of the respective parties and considering the entire materials on record I allow the present revisional application. The impugned order dated 6.12.2000 is hereby set aside. The learned Magistrate shall take immediate steps to take the custody of the concerned vehicle from the possession of the present opposite party No. 2 bearing No. WB 20 2963, in which the engine of the said taxi is installed, and direct the investigating Officer of the case to retain the said vehicle till the disposal of the case or until further order. Application is accordingly allowed.

10. Application allowed