
(1989) 01 P&H CK 0031

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 2581-M of 1988

Tara Chand

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 25-01-1989

Acts Referred:

Citation : (1989) 1 AICLR 750 : (1989) 2 RCR(Criminal) 67

Hon'ble Judges : Ujagar Singh, J

Advocate : Jasbir Singh, S.C. Goyal, Advocates for appearing Parties

Judgement

Ujagar Singh, J.

1. This Criminal Miscellaneous has been filed for quashing of the First Information Report No. 64 dated 23.4.1988, under Section 379 of the Indian Penal Code of Police Station Sunam, District Sangrur.

2. The facts narrated therein are that truck No. HPG2672 was owned by the petitioner and Bahadur Singh (informer) had purchased it on 4.4.1987. In this respect, the petitioner received the whole amount and gave to Bahadur Singh "no objection certificate" and on that basis, Bahadur Singh got the truck transferred in this name on 25.9.1987. Thereafter he employed one Gani Khan as a driver. On the night between 20/21.4.1988, the driver parked the truck as usual in front of the house of Bahadur Singh on the road, near an electric pole. Bahadur Singh and Gani Khan slept on cots near the truck and at about 1.00 a.m., both of them heard the noise of the engine of the truck. Bahadur Singh and Gani Khan woke up and saw Surjit Singh alias Kala son of Anokh Singh, resident of Sunam on the steering and Kapur Singh son of Khazan Singh, resident of Sunam was sitting beside Surjit Singh on the front seat. Jawala Singh resident of village Gharcho (presently at Sunam), Surjit Singh son of Mohinder Singh Jat, resident of Longowal and Tara Chand son of Harbans Lal, resident of Bhatauli were boarding the truck from behind. Bahadur Singh and Gani Khan raised noise, but Surjit Singh drove away the truck. Bahadur Singh and Gani Khan saw all of them in the light from the electric pole. Bahadur Singh purchased this truck

through said Kapur Singh. After purchase, the truck had not been transferred in his name. The truck was involved in an accident and at that time registration certificate was in the name of Tara Chand who received the amount of claim from the insurance Company in respect of the damage to the truck although Bahadur Singh was entitled to it. There was some dispute about this amount of claim between Bahadur Singh and Tara Chand petitioner. In this dispute, Bhagwan Dass, President of Truck Union, Sunam, along with some respectable intervened. It was settled that whatever amount was due to Tara Chand would be paid to him. Tara Chand never came to Bahadur Singh. The dispute was about a small amount. As Tara Chand was aggrieved because of this dispute, all the five persons mentioned above who were known to Bahadur Singh and Gani Khan, had taken away the truck. Truck bears registration PTC9799. On 21.4.1988 Bahadur Singh and Bhagwan Das and some other respectables went to village Bhatauli Mehatpur and Nangal in search of these five persons. They could not find these persons there. In spite of the fact that till the statement of Bahadur Singh was recorded, they had been searching for them but the accused could not be found and Bahadur Singh was therefore, going to lodge a report at the Police Station, but ASI Harinder Singh met him on the way and recorded his statement which was sent for registration of the case. This case was registered at 11.20 a.m. on 23.4.1988.

3. After notice, the parties appeared and on 26.8.1988 one Sohan Lal from the office of the District Transport Authority, Sangrur appeared and produced the file pertaining to truck No. HPG2672/PCT9799. On that day, the learned Counsel for the petitioner produced a copy of telegram, addressed to the District Transport Officer, Sangrur, by the petitioner, the original no objection certificate", as also the original affidavit of the petitioner, sworn in by him on 16.7.1987 for the transfer of the said truck. These documents have been marked as Annexure C3, C1. and C2 respectively. Bahadur Singh sought time to file reply and the case was adjourned to 9.9.1988. Bahadur Singh later on produced his reply by way of affidavit, along with Annexure R1, a copy of receipt signed by Tara Chand on 13.7.1987 in token of receipt of Rs. 22,500/, Annexure R2 showing deposit of Rs. 5,000/ in State Bank of Patiala, Sunam in the name of Guru Nanak Truck Union, Sunam; Annexure R3, a copy of receipt signed by Kharaiti Lal on 29.4.1987 in token of receipt of Rs. 50,000/ from one Mukhtiar Singh, contractor, near the office of the Block Development Officer, Sunam, District Sangrur and also showing that the vehicle had been given to said Mukhtiar Singh and Annexure R4, a certificate given by the Manager, State Bank of India, Slapper to the effect that Tara Chand had liquidated the entire outstanding in respect of the loan taken against the truck HPG2672 and as such, nothing was due from him to the said Bank.

4. I have heard the learned Counsel for the petitioner and the respondent State, as also learned Counsel for Bahadur Singh.

5. The learned Counsel for the petitioner argued that only an amount of Rs.

22,500/ was paid to the petitioner on 13.7.1987 and as the remaining amount was due from Bahadur Singh, the ownership of the truck could never be deemed to have been transferred and, therefore, the petitioner remained the owner of the truck. Even if the story of taking away the truck, as given by Bahadur Singh, is true, no offence under Section 379 of the Indian Penal Code is made out. The truck would be deemed to be in possession of Tara Chand as owner and this step is to be considered as a bona fide act. The learned Counsel has further argued that the original "no objection certificate" and the original affidavit remained with the petitioner and Bahadur Singh got the transfer on forged documents without paying the balance consideration. The learned Counsel for the State has argued that the version given by Bahadur Singh in the First Information Report is amply corroborated by the fact that the truck was impounded in the jurisdiction of Police Station Una from Surjit Singh who had driven away the truck, as stated in the First Information Report. The learned Counsel for Bahadur Singh has supported the averments in the affidavit of Bahadur Singh.

6. It may be noted that before this case was registered, the truck was impounded and was in the custody of Police Station Una in a case under Section 129A of the Motor Vehicles Act. ASI Harinder Singh, after registration of the instant case, made an application in the Court of the Chief Judicial Magistrate, Una for taking custody of the truck in the present case, for purpose of investigation. The Chief Judicial Magistrate directed the custody of the truck to be given to ASI Harinder Singh, on his furnishing Sapurdari in the amount of Rs. 2,00,000/. ASI Harinder Singh challenged this condition in the High Court of Himachal Pradesh at Shimla, on the ground that such a heavy security was improper since he had no personal interest in the truck, except that he required it in accordance with law for the purpose of investigation. R.S. Thakur, J. of that Court decided this petition Cr.M.P.(M) 413 of 1988, Shri Harinder Singh v. Tara Chand and another. It was held that the Police of Police Station Una would retain the custody of the truck, but the Station House Officer of Una shall make this vehicle available to the Police Station of Sunam for the purpose of investigation as and when required by the investigating officer of that Police Station or by the Court at Sunam later on in the course of trial in the case. A further direction was also given as a clarification that as soon as the Chief Judicial Magistrate, Una disposed of the case, he shall pass appropriate orders with regard to the custody of the said vehicle.

7. From the foregoing discussion of the facts, it is apparent that the truck was sold by the petitioner for a consideration of Rs. 1,56,000/. Out of this consideration Bahadur Singh is said to have made payment of Rs. 10,000/ on 4.4.1987, Rs. 50,000/ on 29.4.1987, 7,500/ on 22.6.1987 and Rs. 22,500/ on 13.7.1987. An amount of Rs. 16,000/ is claimed by Bahadur Singh in respect of the said claim which had been wrongly paid to the petitioner. A further amount of Rs. 50,000/ is said to have been paid by Bahadur Singh on 18.7.1987. Thus, according to Bahadur Singh, whole of the consideration was paid by him to the petitioner and on this basis, he got the truck transferred with a new registration

number in his name. Support to his claim is sought on the basis of Annexures R1 to R4 and affidavit of the petitioner, said to have been attested on 18.7.1987 (this document is on the file of District Transport Officer).

8. When confronted with the averments of payments in the affidavit of Bahadur Singh, the learned Counsel for the petitioner could not seriously challenge the payments of Rs. 10,000/ on 4.4.1987 and Rs. 50,000/ on 29.4.1987. Other payments were very seriously challenged on the ground that the amount of Rs. 7,500/ said to have been paid to one Kapur Singh on 22.6.1987 is not supported by any receipt from the Bank. Similarly, an amount of Rs. 16,000/ paid by the insurance Company in respect of the claim of damages of the truck was not agreed on the ground that the petitioner was entitled to that payment and there is no question of Bahadur Singh getting that amount since the petitioner remained the owner of the truck till full amount was paid to him. As regards the amount of Rs. 50,000/ said to have been paid to the petitioner by Bahadur Singh on 18.7.1987, he has no receipt or other document to support this payment. The only support for this payment is sought from an affidavit purporting to be that of the petitioner, attested at Sunam. This affidavit has been challenged as a forgery. In paragraph 2 of the affidavit of Bahadur Singh, it has been specifically admitted at page 3 thereof that that petitioner applied for the supply of 'no objection certificate' after receiving substantial amount and the same was obtained and later on confirmed on 17.8.1987. There is no dispute between the parties that 'no objection certificate' was obtained by the petitioner and he has produced the original as Annexure C1, but the 'no objection certificate' remained with the petitioner, and was not handed over to Bahadur Singh at all. The fact that this 'no objection certificate' was obtained is not denied. This assertion in the affidavit is further supported by the affidavit of the petitioner, got attested on 16.7.1987 by the petitioner himself at Una and this affidavit has also been produced by the petitioner as annexure C2. This affidavit contains paragraphs 2, showing that the petitioner had sold the said vehicle to Bahadur Singh and received full and final payment. It further shows that the petitioner had no objection whatsoever if the ownership of the said vehicle be transferred in the name of the above said purchaser. These averments in the affidavit of the petitioner are admittedly against facts, as, according to Bahadur Singh, the payment of at least of Rs. 50,000/ was not made till 18.7.1987. Bahadur Singh relies upon an affidavit contained in the file of District Transport Officer, Sangrur. I have looked into this affidavit. It bears no date and the stamp paper on which the same is typed shows its purchase on 14.7.1987. A bare look at this affidavit indicates three things; (i) the name of petitioner and particulars of the truck in the name of Bahadur Singh have been typed later on, as the same have a different typeimpression; (ii) space against the 'place' as also against the 'date' have been left blank; and (iii) the formation of the letter "Tara Chand" under the word 'deponent', as also on the back of the stamp paper is different from that of affidavit Annexure C2. The fact that the petitioner and Bahadur Singh executed affidavits regarding the sale and purchase of truck at Una on

16.7.1987 is admitted in the affidavit of Bahadur Singh. This is also admitted that this affidavit of the petitioner was to be handed over to Bahadur Singh at the time of full and final payment and therefore, the petitioner kept the same with him and promised to reach Sunam the next day. The petitioner, according to Annexure C3, intimated the District Transport Officer, Sangrur that 'no objection certificate' be not acted upon and be deemed as cancelled. Before the District Transport Officer two photostat copies of the 'no objection certificate' were produced and probably on the basis of the same, the District Transport Officer wanted to confirm the issuance of such a certificate. This fact was confirmed and the issuance of this certificate is not even denied by the petitioner who claims that this 'no objection certificate' remained with him and it was to be handed over to Bahadur Singh after full and final payment. It is surprising that when the petitioner had come to Sangrur, Bahadur Singh did not obtain the original 'no objection certificate' from the petitioner after he is alleged to have made payment of Rs. 50,000/, which, according to him, was the only amount due from him. As already mentioned, Bahadur Singh obtained Annexures R1 and R3 when he made the payment of Rs. 22,500/ and Rs. 50,000/ to the petitioner and Kharaiti Lal respectively. Kharaiti Lal happens to be the brother of the petitioner. It is apparent that there was dispute between both the parties about payment and in such a situation, Bahadur Singh was expected to obtain a receipt of Rs. 50,000/ from the petitioner on 18.7.1987 and at least some document from Kapur Singh in respect of payment of Rs. 7,500/ made on 22.6.1987. Another fact gains importance to show that affidavit in the file of the District Transport Officer does not prima facie look to be genuine and that is, the stamp paper of this affidavit was purchased on 14.7.1987 whereas, admittedly, the affidavit was got attested on 16.7.1987 at Una. The purpose for which this stamp paper was purchased on 14.7.1987 is not given on the back thereof. I have also looked into the affidavit of Bahadur Singh in the file of the said officer and it shows that the verification thereof is of paragraphs 1 to 3 only and correctness and truthfulness of paragraph 4 is not verified. The typing impression of this paragraph does not tally with the typing impression of the remaining part of this affidavit and this paragraph reads, "that NOC" and affidavit is genuine", showing thereby that the deponent did not want to get the facts in paragraph 4 attested from the Oath Commissioner.

9. In paragraph 6 of the petition, it has been specifically mentioned that the truck was impounded on 22.4.1988 by the Traffic Police of Police Post Mehatpur, Police Station Una from one Surjit Singh son of Mohinder Singh, Caste Jat Sikh, residence of House No. 96, Police Station Nakodar, District Jullundur. In his own affidavit, Bahadur Singh has admitted this paragraph as correct. It has been further added that said Mohinder Singh along with the petitioner and some other persons, mentioned in the First Information Report, stole away the truck. Name of this Mohinder Singh, mentioned in paragraph 6 of the affidavit in reply and name of Surjit Singh, mentioned in paragraph 6 of the petition, are not mentioned in the First Information Report wherein the names of Surjit Singh of

Sunam and Surjit Singh of village Longowal are given.

10. To support the payments, alleged by Bahadur Singh, two passbooks : one of Darshan Singh, brother of Bahadur Singh and the second of Bahadur Singh himself were produced before me for perusal. Passbook of Darshan Singh shows withdrawal of amounts of Rs. 3,000/ Rs. 500/, Rs. 3,000/ and Rs. 1,500/ from his account on 14.5.1987, 14.5.1987, 1.9.1987 and 2.9.1987. All these four dates, as also the amount do not tally with the dates and amounts said to have been paid by the Bahadur Singh. Passbook of Bahadur Singh himself shows withdrawals Rs. 50,000/, Rs. 2,300/, Rs. 27,000/, Rs. 37,000/, Rs. 1,000/, Rs. 7,400/, Rs. 25,500/, Rs. 5,500/, Rs. 10,000/, Rs. 9,000, Rs. 8,000/, and Rs. 1,890/, on 13.3.1987, 17.3.1987, 27.3.1987, 1.4.1987, 6.4.1987, 24.4.1987, 28.4.1987, 14.5.1987, 28.5.1987, 30.5.1987, 22.6.1987 and 25.7.1987 respectively. Rest of the amounts withdrawn after the last mentioned date are not relevant for the purpose of considering the relevant payments. Payments of Rs. 10,000/ and Rs. 50,000/ on 4.4.1987 and 29.4.1987 respectively are, to some extent, supported by withdrawals on 1.4.1987, 24.2.1987 and 28.4.1987. Payments of Rs. 22,500/ made on 13.7.1987 need not be supported, as this amount is admitted by the petitioner himself. Payment of Rs. 50,000/ said to have been made on 18.7.1987 is not supported by any withdrawal of the amount from the said account of Bahadur Singh. Bahadur Singh also produced some incometax returns, showing gross income of Bahadur Singh himself. These income tax document cannot show any payment to the petitioner.

11. The legal proposition, whether an owner of a vehicle can take away the same till the remaining substantial part of consideration is paid. Definition of 'theft' is as under :

"Theft. Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft."

According to this definition, taking away of any movable property out of the possession of any person without that person's consent does not amount to theft unless it is accompanied by dishonesty. It is further necessary that taking away must be without the consent of the person from whose possession it is taken away. From the contents of the First Information Report as well as from the affidavit of Bahadur Singh, it is not clear whether full and final payment was made before the date of occurrence. As already held, full and final payment does not seem to have been made. It is further clear from the facts of this case that the ownership of the truck was not to be transferred by the petitioner to Bahadur Singh till payment of the whole of the consideration. The First Information Report contains an admission of Bahadur Singh that there was some dispute about part of consideration between the petitioner and himself. In this view of the matter, it cannot be said that if at all the vehicle was taken away on the said date, it was taken away dishonestly by the petitioner and others. The circumstances show that there was implied consent in the agreement itself, as indicated above, that

till the payment of the whole of the consideration, the petitioner was to remain the owner and there is no denying the fact that an owner can remove his vehicle bona fide.

12. The fact that the First Information Report was registered only on 23.4.1988 and there being no explanation for delay of almost 2 days, is also yet another fact which indicates that there must be some negotiations between the petitioner and Bahadur Singh to settle the matter, but the petitioner does not seem to have agreed and this First Information Report was got registered as a method to put pressure on the petitioner to overcome difficulty of Bahadur Singh having produced suspicious documents before the District Transport Authority for getting the truck transferred in his name. However, Bahadur Singh may file a suit for getting declaration of ownership in respect of the truck from the Civil Court where the matter will be gone into in detail, for examining the genuineness of the documents produced by him before the District Transport Officer, Sangrur.

13. The learned Counsel for Bahadur Singh and the learned Counsel for the State have relied on *Pratibha Rani v. Suraj Kumar* and another, 1985(1) Recent Criminal Reports 539 : 1985 C.C. Cases 25 (SC) . wherein the apex Court held that perusal of the allegations made in the complaint in that case undoubtedly made out a positive case of the accused having dishonestly misappropriated the articles handed over to them in a fiduciary capacity. In that case, all the ingredients of the offence under Section 405 of the Indian Penal Code were pleaded and a prima facie case for summoning the accused was made out. It was ultimately held that in these circumstances, the complainant should have been given an opportunity by the High Court to prove that case, rather than the quashing of the complaint and such an exercise of jurisdiction under Section 482 of the Code of Criminal Procedure was totally unwarranted by law.

14. Another case *Smt. Gulab Preet and others v. Sardar Tirath Singh*, 1986 C.C. Cases 576 (SC) has also been relied on. In that case, offences were under Sections 418, 420 and 34 of the Indian Penal Code and complaint was filed by the respondent against the petitioners, alleging that the petitioners had in furtherance of their common intention, cheated him by dishonestly concealing the age of Smt. Gulab Preet alias Preet Kaur and thereby fraudulently induced him to accept the marriage proposal for his son and as a result thereof he had to suffer a loss of about Rs. 75,000/ and odd. The trial Court, after going through the presuming evidence and the averments made in the complaint come to the conclusion that there was a prima facie case against all the accused and consequently, he passed the order dated 10.10.1985, summoning all of them. The petitioner filed a petition under Section 482 of the Code of Criminal Procedure, challenging the summoning order. A reference to Section 245(2) of the said Code was made and it was held that the trial Court was entitled to discharge the accused at any stage of the case, even prior to the recording of evidence, referred to in Section 244 of the Code. The petitioners might try their luck before the trial Court. In the present case, the facts are entirely different

and even according to the admission of Bahadur Singh, the petitioner could act bona fide in the exercise of his rights of ownership of the vehicle especially when the facts, mentioned in the First Information Report, are not wholly true.

15. In view of the foregoing discussion, I feel that it is a case where this Court should intervene for the ends of justice to avoid abuse of the process. Therefore, this criminal miscellaneous is accepted and the First Information Report is quashed.

16. The file of the District Transport Officer, Sangrur be forwarded to him immediately.

JUDGMENT accordingly.