

(1994) 04 AHC CK 0017

In the Allahabad High Court

Case No : Criminal Revision No. 1078 of 1991 and Criminal Misc. Application No"s. 5754 and 8418 of 1990

Vijay Kumar

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 19-04-1994

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 139
Criminal Procedure Code, 1973 (CrPC) — Section 102, 102(1), 102(3), 482
Motor Vehicles Act, 1988 — Section 114, 115, 116, 129, 181
Penal Code, 1860 (IPC) — Section 279, 306, 379, 384, 406

Citation : (1994) 3 AWC 1360

Hon'ble Judges : K. Narayan, J

Bench : Single Bench

Advocate : S.S. Agnihotri, for the Appellant; A.N. Misra, for the Respondent

Final Decision : Allowed

Judgement

K. Narayan, J.—This criminal revision arises in rather peculiar circumstances disclosing unwarranted activities of the police and rather apathetic attitude of the Magistrate to say the least about that.

2. Before proceeding with the revision on merits it may be mentioned that by an order dated 14-5-1990 Additional Chief Judicial Magistrate stems to have had adopted a noval method of disposing of two petitions moved by Shyam Lal and Vijai Kumar claiming custody of tractor and trailer by directing that they may get their rights declared by civil court The order did not find favour with this Court as both the parties had challenged the same in Misc. application No. 5754 of 90 and 8418 of 1991 and consequently by an order dated 20-8 1990. Hon''ble G.P. Mathur. I. directed the Magistrate to record a clear finding and decide the applications. This time some how both the applications were considered by the Judicial Magistrate Gyanpur and by the impugned order dated 20-6-1991, Supardgi has been directed in favour of Shyam Lal. Aggrieved by this order, Vijai Kumar has again approached this Court u/s 482 Code of Criminal Procedure.

3. The learned Counsel for the parties have been heard at length and the order of the Magistrate read over along with them. The order dated 20-6-1991, is conveniently silent about the nature of the proceedings in which the applications had arisen. I am afraid the learned Counsel for the Applicant also could not give a proper information during the arguments. By that whatever it may, I would again better proceed afresh with the facts which are material for the purposes of the present applications.

4. The proceedings before the Magistrate had commenced on Challani report dated 28-4-1990 under the Motor Vehicles Act submitted by the police. The report which was probably submitted by some sub-inspector, conveyed certain facts and mentioned the offences as u/s 87, 181, 197, 192, 194, 196, 207, 129, 114, 115 and 116 of the Motor Vehicles Act. The Vehicle involved was said to be a tractor No. UTN 4237 and Tractor UGZ 842. The facts alleged as constituting offences were rash speed, failure to produce driving licence and/or driving without licence. The accused mentioned in the report has been one Rajendra Chauhan son of Ram Nihore who was later on shown to be the brother of Vijai Kumar. It also appears that there was coal loaded in the trailer and on 29-4-1990 that is, next day, this coal was given in the Supardgi of Ram Nihore, father of Vijai Kumar and Rajendra Kumar, claimant and the accused respectively. This itself indicates that the papers were produced before the Station Officer but for the reasons to be guessed only, the tractor and trailer were detained.

5. The guess is to be made from a perusal of the affidavits of the parties projecting their claims for Supardgi.

6. The contention of Vijai Kumar was that he was owner of the vehicle and Shyam Lal may be with others had obtained his signatures on certain papers, namely, an unfilled blank form and a stamp paper on 23-3-90. For this act, he had also filed a complaint under Sections 384, 504, and 306 IPC which was pending. This was the contention which could meet the allegations of transfer put forward by Shyam Lal in his case, which shall be mentioned below.

7. On the other hand, Shyam Lal had contended that Vijai Kumar is not the owner of the vehicle nor Rajendra Chauhan was driving the vehicle on the material date, that is, 28-4-1990. His contention has been that Vijai Kumar had sold this tractor and Trailer to him way back on 6th October, 1989 for a consideration of Rs. 40,000/-, for which a stamped paper was executed in presence of some notary. He also contended that despite the letter and payment Vijai Kumar was not handing over the registration certificate and consequently Shyam Lal had to obtain duplicate certificate in his name on 21-3-1990, which was filed by him. It may again be mentioned that nothing was said about issue of notice by R.T.O. to Vijai Kumar when allegations of loss of certificate were put forward before him. For the occurrence of 28-4-1990, it was contended by Shyam Lal that, in fact, his driver Neel Kamal was driving the vehicle and when it reached near P.S. Chauri Bazar, Rajendra Chauhan, brother of Vijai Kumar created fuss about the payment due in respect of the coal supplied by Shyam Lal

to Vijal Kumar, where upon the police seized the vehicle.

8. After the order of August, 1990 of this Court the Magistrate purported to have taken into account the above respective cases and directed release of the vehicles in favour of Shyam Lal.

9. For a proper appreciation of the laws applicable to the present controversy, it will be better to begin with the beginning, that, is the purported to by the police. The authority to seize the property by the police is contained in Section 102 Code of Criminal Procedure. Before going with it, it has to be borne in mind that all laws of regulation are to be read as subordinate to the Constitution of India, which is itself recognises the rights of a citizen to hold property. Section 102 Code of Criminal Procedure reads as under:

102 POWER OF POLICE OFFICER TO SEIZE CERTAIN PROPERTY (1) 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 create suspicion of the commission of any offence.

(2) Such police officer if subordinate to the officer, in charge of a police station, shall forthwith report the seizure to that officer.

(3) Every police officer acting under Sub-section (1) shall forthwith report the seizure to the Magistrate having Jurisdiction and where the property seized is such that it cannot be conveniently transported to the Court, he may give custody thereof to any person on his executing a bond undertaking to produce the property before the court as and when required and to give effect to the further orders of the Court as to the disposal of the same.

10. The above said section authorises a police officers to seize the property but if is not a person in uniform and this authority is subject to the condition, the property which may be alleged or suspected to have been stolen or which may be found under the circumstances, which create suspicion of the commission of any offence. In the instant case, there was not even an iota of evidence or even an impression that the tractor and Trailer could in any form be stolen property. This observation is in the face of Challani report where nothing is said about the sale etc. as till then there was nothing before the police according to the case that it has been put as a matter of dispute about the ownership of tractor. The only authority which could be thought of in favour of the police could be derived from the words "or it may be found under the circumstances which creates a suspicion of commission of any offence". The circumstances for creation of suspicion should relate to the property itself. It will be too high to think that if a person sees the thieves with the help of his spectacles his spectacles should be taken in police custody. Even if someone was driving without licence the tractor could not be held liable for nor the vehicle could in any way be a valuable piece of evidence for the purpose of trial of those offences, it will be seen below as to how the police proceeded to mention every possible section in the so called Challani report in order to lay hands on the tractor and for the present it will be

suffice to say that Section 102 Code was not at all available to the police for the seizure of this tractor and there could not be any reason in the said seizure and subsequent refusal to deliver the vehicles except other factors, which might have weighed between Shyam Lal and Vijai Kumar and which were of no concern for the police.

11. The activity of the police officer has been put under restriction by clauses 2 and 3. If he is not station officer, he has to report the matter to the Station Officer immediately and irrespective of being police officer or station officer the matter of secure is to be reported to the Magistrate having jurisdiction forthwith and for that period, the property is to be given in the custody of any person on his executing a bond to produce the property before the court as and when required and to give effect to the further orders of this Court. It is nowhere said in the Challani report that the identity of Rajendra Kumar was not acceptable or that he had failed to give any bond of the nature. Where was the reason for detaining the vehicles in such circumstances Even the duty of the Magistrate in this behalf requires a quick action.

12. Where any property is seized, it has to be ordinarily forwarded to the Magistrate and if that is not possible, it has to be given in custody of some other person. In the instant case, the police did not take either action.

13. Reverting to the sections applied by the police in the Challani report Section 87 of the Motor Vehicles Act applies so temporary permits, which has no application to the tractor and trailer. Section itself is a part of Chapter V. which relates to control of transport vehicles and tractor is not one of them. Section 181 relates to driving of vehicle in contravention of Sections 3 and 4 of the Act, that is, without a driving licence and age limit. There is not even a word about the age of Rajendra Chauhan even by guess work. As to whether there was licence or not is different thing. Section 197 relates to the having of vehicle without the consent of the owner or any lawful authority, There was nothing of that sort; Section 192 Is In respect of use of vehicle without registration or permit. The registration etc. were there and naturally if it was not on the vehicle itself, it might have been an offence by an offence by an individual person but by no stretch of imagination could a tractor be the the property involved in the offence. Similar is the case with Section 194 though it is said in the report that the tractor was being driven in rash manner but there was nothing for any negligence or manner in which that rashness was being exercised. It will also be material to mention that though rash driving is an offence u/s 279 IPC which by itself is cognizable offence there was no reference of it. As for Section 196 again it was an offence for breach of conditions of keeping a vehicle insured and that too was subject to production of certain documents and meets the same fate as Section 192, Section 129 in its turn relates to wearing of preventive headgear and this naturally does not cover four wheel vehicles as it relates to the side car of a motor cycle, Section 114 applies to weight of vehicle, Section 115 applies to the restriction on the use of vehicles and Section 116 applies to the power to

create traffic signs. As to how these could be applied to the vehicle la question, that is, tractor and trailer is something, which could be understood only by the police.

14. As far Sections 192 and 196, reference may also be made to Rule 139 of the Rules framed under the Act called the Central Motor Vehicle Rules and a perusal thereof will show that it is not always necessary to carry registration papers on the vehicle itself, specially when it is a private vehicle and all that is required is a production of those documents at a time and place to be fixed by the officer concerned within 15 days of the demand. That apart, sections themselves include the words that there should be a reason to believe that the registration or insurance are not according to law". Where there was nothing else except a mere thought of the public officer, there could not be any justification for demanding papers and seizing the vehicle for that end.

15. It need hardly be observed In view of the above discussion that the so called seizure was itself beyond authority of law conferred upon the police officer and was only an illegal act which should have been undone by the Magistrate immediately on production of the report for the so called seizure. In fact, that is the purpose behind directions contained in Section 102(3)Code of Criminal Procedure in getting production before the Magistrate. Once this seizure is to be undone being illegal, there can be no occasion of second thought except to deliver it back to Rajendra who was in immediate possession of the tractor and trailer according to own report of the police, 16 Most of the argument advanced by the learned Counsel for the parties related to the right of one party or the other on the basis of their registration. Although it it not very much needed in view of what has been said above, yet it could be gone into for the purpose of record. Stress has been upon the ownership as shown by the registration certificate. In that behalf it may also be said that there is no dispute that at one stage, that is, till October or March, tractor and trailer belonged to Vijai Kumar. If there was any transfer which was vehemently denied, the burden should have been upon the person who alleges transfer but then again the question of title is not to be gone into by the Magistracy or police officer. If there was any dispute about the passing of the consideration or transfer of the property by way of sale, It was a subject to be decided by the Civil Court and not a factor to have weighed with the police or magistracy, nor they could withhold the vehicles for that purpose.

17. A reference was made by the learned Counsel to several decisions of this Court in order to show that the property should ordinarily be delivered to the person from whose possession it was taken by the police. It may be a general principle but it has to be subject to certain other conditions also. It will depend upon the nature of the prosecution and reasons for which the property is seized by the police, us to who should be given Supardgi of the same. Before recording my observations in that behalf I may refer to the decisions themselves. The case of Brijendra Singh Vs. Brij Kumar Gupta and Others, was a case where the

property was seized by the police for an allegation of offence under Sections 420, 465 and 379 IPC. The case was considered as not fit for prosecution and this Court maintained the order for delivery of the bus said to have been seized, to the person from whose possession it was taken. The basic thought remains that since the offence was not made out there was no occasion for transferring possession of the property to another person. That apart, the discussions noted above about the desirability of seizure in such cases remain at their own place. Similar was the decision in the case of Zafar Ali alias Achchan Vs. Tausik Hasan and Another, . Where also motor vehicle was involved for an alleged offence under Section 406 IPC. where the Court after dropping of the investigation directed that the property, that is, motor truck should be restored by application of status quo, that is, to the person from whose possession it was taken.

18. Again in the case of Sener Pal Singh Vs. Mahmood and Others, , the dispute was about the custody of a tractor and there were counter-allegations about the sale and denial thereof. This Court observed that the proceedings were not meant to determine the title to the property and maintained the order rendered by the lower court for delivery of possession to the person from whose possession it was taken by way of seizure.

19. From a perusal of the above decisions, one thing is clear that it has been a usual practice that whenever there is some dispute about the transfer either validity or by way of forgery, a recourse is taken to the police as a short cut to get possession of the property by way of seizure and Supardgi and this practice with the police officers should be restricted. In fact, they have very limited power for seizure and misuse thereof should not be easily tolerated.

20. Thus in view of the decisions already existing, also the giving of Supardgi in favour of Shyam Lal could not be justified. As a matter of fact the allegations have been that there was sale made by Vijay Kumar in favour of Shyam Lal and he was not handing over the certificate of registration. On the other hand, Vijay Kumar had contended that his signatures were obtained on certain papers by use of threat etc. Those facts need not be gone into here but in the circumstances obtaining issue of duplicate of registration certificate at the instance of Shyam Lal and getting registration in his name on such duplicate certificate itself was open to all doubts. Where the transferor was not appearing before the Transport authority, with allegation of transfer and loss of original certificate, it would have been a prudent act on the part of the transport officer to have desired the presence of the former owner, which might have cleared many things. For reasons best known to him that procedure was not adopted. Duplicate certificate of registration is of no value when the original certificate was already with Vijay Kumar and was produced before the Magistrate, That simply showed the falsehood of the duplicate certificate and for that reason also the order of the Magistrate for directing Supardgi in favour of Shyam Lal cannot be upheld.

21. in view of the above reasons, this application should succeed.

22. The revision is allowed and the order dated 20-6-1991 rendered by Sri S.K. Vishwakarma Judicial Magistrate, Gyanpur, Varansi in case No. 521 of 91 releasing the tractor and trailer in favour of opposite party Shyam Lal is hereby set aside. Shyara Lal is directed to surrender the tractor and trailer to the Court concerned immediately, which shall deliver the same to Applicant Vijai Kumar son of Ram Nihor without any bond as the seizure itself has been against law. The connected revisions are also disposed of by this order.