
(1987) 03 P&H CK 0109

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 3392-M of 1986

Vinod Doshi and ors.

APPELLANT

Vs

Shiv Kumar Jain

RESPONDENT

Date of Decision : 26-03-1987

Acts Referred:

Citation : (1987) 2 RCR(Criminal) 499

Hon'ble Judges : S.S.Sodhi, J

Advocate : R.K. Handa, H. L. Sibal, Harbans Singh, R.C. Sethia, Advocates for appearing Parties

Judgement

S.S. Sodhi, J.—The challenge here is to the wholly unwarranted and patently erroneous order of Shri M. S. Lobana, Additional Sessions Judge, Patiala, of May 5, 1986, and the subsequent order of the Additional Chief Judicial Magistrate, Patiala, of May 14, 1986, summoning the petitioners they being the Chairman, the Managing Director and the Vice President of M/s. Premier Automobiles Limited, Bombay, for trial under sections 420, 468 and 471 read with section 120 of the Indian Penal Code

2. This matter concerns the booking of a Premier 11914E Saloon car by Mrs. Subash Rani wife of the complainant Shiv Kumar Jain. According to the complainant he filled in the requisite car booking form on behalf of his wife Mrs Subash Rani and submitted it alongwith a Bank draft for Rs. 11,000/ to M/s Premier Automobiles Limited. The criteria for fixing the priority for delivery being citywide, New Delhi was recorded as the first preference in this form as the city from where, the delivery was desired, with Ambala and Patiala being the second and third preferences. The receipt cum priority number intimation received respect of this booking, however, showed that it pertained to Jullundur and as thus, not as per the first preference mentioned in the form namely, 'New Delhi'. A letter was thus, immediately written to the petitioners on October 24, 1985 whereby it was pointed out to them that New Delhi was the first preference and not Jullundur: Another letter was also written to them in this behalf on November

14, 1985.

3. These are the allegations that lead to the filing of the present complaint against the petitioners accusing them of breach of trust, misappropriation and cheating in treating the Rs. 11,000/ deposited for the booking of the car towards its delivery other than at New Delhi, saying this amount would not have been parted with if it had been known that the car would not be booked for delivery at New Delhi.

4. During the pendency of the proceedings before the Additional Chief Judicial Magistrate, Patiala, however, Subash Rani Jain received a reply dated December 3, 1985. to her letters from the Manager Sales Administration of M/s. Premier Automobiles Limited, where by it was pointed out that the first choice as recorded in the booking form, was "Jullundur" and not New Delhi. A photostat copy of the booking form was also sent.

5. In support of this complaint, the complainant came into the witnesses box and to corroborate him, he examined his wife P.W.2 Mrs. Subash Rani and P.W.3 Dewan K. S. Puri, who deposed that the alteration in the booking form of the words New Delhi to Jullundur" was not in the hand of Mrs. Subash Rani.

6. The Additional Chief Judicial Magistrate, Patiala, by his order of March 11, 1986, dismissed the complaint holding that there were no grounds for proceeding against any of the petitioners. This order was, however, set aside in revision by, the impugned order of the Additional Sessions Judge; Patiala of May 5, 1986, in pursuance of which, the Additional Chief Judicial Magistrate, Patiala, by his order of May 14, 1986, summoned the petitioners to stand trial for the offences alleged against him.

7. It will be seen that the entire case against the petitioners is founded upon the allegations that the first preference for the delivery of the car booked was changed from New Delhi to Jullundur. It is pertinent to note that there is no mention in any of the material on record, of the identity of the, person or persons who made this change assuming that this was done with a dishonest intention, nor even where this change was made. There in fact, no allegation of any dishonest intention on the part of any of the petitioners to have made this change so as to delay the delivery of car to the complainant and his wife. Mr. Harbans Singh, counsel for the respondent could point to no material on record to suggest that the change of the first preference from New Delhi to Jullundur resulted in or could result in any delay in the delivery of the car. Such being the situation, no breach of trust cheating or forgery can even prima facie be said to have been committed by any of the petitioners.

8. Further there is patent lack of jurisdiction in the courts at Patiala to entertain this complaint. As mentioned earlier in the absence of any allegations as to where the alleged offence was committed namely the change of the priority from New Delhi to Jullundur, it is not understandable how the court at Patiala could assume jurisdiction in the matter.

9. Faced with this situation, counsel for the complainant sought to contend that the impugned order could not and should be inter forced in these proceedings as it has been passed by the competent court in exercise of the discretion vested in it and that it would be open to the petitioners when they appear before the Magistrate to prove their innocence. The apparent fallacy in this contention is so glaringly writ large. The mere passing of an order cannot confer jurisdiction upon a court lacking it, when, as in a case like the present, the impugned order is shown to be one passed by a court lacking the requisite jurisdiction.

10. This apart, while it is no doubt true that an order to, the Magistrate summoning the accused should not be lightly interfered with, it is also well settled as held by the Supreme Court in Smt.Nagawwa v. Veeranna Shivalingappa Konjalgi and others, 1976 S.C.C. (Cri) 507 that such an order can be quashed :

(1) Where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) Where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) Where the discretion exercised by the magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible:

11. On all these grounds too, the impugned order cannot stand and indeed amply deserves to be quashed. There can be no escape from the conclusion that the complaint and the material on record do not disclose the essential ingredients of the offences alleged against the petitioner rather the allegation made there cannot, but be held to be patently absurd.

12. The impugned orders of the Additional Sessions Judge and of the Additional Chief Judicial Magistrate, Patiala are consequently hereby set aside and this petition is thus accepted.