

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: November 16, 2010
Judgment delivered on: November 23, 2010

+ **CRL.M.C. 2902/2009**

SANJEEV SHARMA

....PETITIONER

Through: Mr. R.K.Thakur, Advocate

Versus

STATE OF DELHI & ORS. RESPONDENTS

Through: Ms.Fizani Husain, APP for the State.

None for respondent No.2.

CORAM:

HON'BLE MR. JUSTICE AJIT BHARIHOKE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in Digest ?

AJIT BHARIHOKE, J.

1. Sanjeev Sharma, the petitioner herein, vide this petition under Section 482 Cr.P.C. has prayed for quashing of impugned order of the learned Additional Sessions Judge dated 22nd July 2009 in criminal revision whereby he set aside the order dated 8th April 2009 passed by learned M.M. and directed Car No.DL9CD-2438 to be released on superdari in favour of respondent No.2.

2. Briefly stated, facts relevant for the disposal of this petition are that on 17th May 2004 respondent No.2 R.K.Gupta, who is the registered owner of Car No.DL 9CD-2438(Maruti Zen) filed a complaint at P.S. Paschim Vihar claiming that the aforesaid car belonging to him has been stolen from B-3/472, Paschim Vihar on 22nd May 2003. On the basis of said complaint, formal FIR No.377/2004 under Section 379 IPC was registered at P.S. Paschim Vihar.

3. As per the status report filed by respondent No.1 under the signatures of ASI Nirmaljeet Singh, during investigation above said Maruti car was found in possession of the petitioner Sanjeev Sharma who claimed that he had purchased the car from Raj Kumar Gupta on 10th September 2003 in consideration of ₹1,60,000/-. He also produced Forms No.29 and 30 and cash receipt dated 10th September 2003, duly signed by respondent No.2. Respondent No.2 Raj Kumar Gupta admitted his signatures on Forms No.29 and 30 as also on the cash receipt and claimed that he had signed those documents in blank and given them to his younger brother, late Sanjay Gupta, about 5/6 years back in connection with one Opel Car. He also claimed that after the death of his brother Sanjay Gupta, his wife Mrs.Ritu Gupta misused those blank documents. As per the status report, during investigation Mrs.Ritu Gupta stated that aforesaid car was never stolen from her premises No.B-3/472, Paschim Vihar, Delhi and it was never parked

there. She claimed that R.K.Gupta has given her address in the complaint to harass her. She further stated that actually said car was purchased by late Sanjay Gupta in the name of his younger brother R.K.Gupta (respondent No.2) who, taking benefit of the same, sold it to the petitioner Sanjeev Sharma. Investigation also revealed that aforesaid car was financed by M/s Baldev Finance Company and that respondent No.2 R.K. Gupta, concealing the fact that he had filed an FIR relating to theft of the car, applied for duplicate Registration Certificate at Transport Authority, Janak Puri and submitted a false affidavit that the car was not involved in a criminal/court/theft case. The investigating officer found the averments in the FIR to be false and submitted the final report before the Metropolitan Magistrate, seeking closure of the case.

4. Both the petitioner as well as respondent No.2, claiming themselves to be the owner of the car in question, moved applications under Section 451 Cr.P.C. for release of the car in their respective favour on superdari. The learned M.M., vide his order dated 8th April 2009 observed, "since both the parties are claiming ownership qua stolen vehicle, it would be appropriate for the parties to get the declaration from the Civil Court regarding their title towards the stolen vehicle. Hence, both the application stands dismissed." Thereafter he listed the case for 16th May 2009 for consideration of an application under Section 91 Cr.P.C. moved by respondent No.2 (complainant) as

also the protest petition filed by the complainant against the closure report.

5. Respondent No.2, feeling aggrieved by the dismissal of his application under Section 451 Cr.P.C. filed a revision petition and learned Additional Sessions Judge, after hearing the parties, set aside the order of the learned Metropolitan Magistrate dated 8th April 2009 and directed release of aforesaid car on superdari to the registered owner i.e. respondent No.2, on furnishing a superdarnama in the sum of ₹2.00 lacs to the satisfaction of the learned Metropolitan Magistrate, subject to the condition that the superdar shall not tamper with the car and produce it as and when directed by the trial court.

6. Learned counsel for the petitioner submitted that the impugned order dated 22nd July 2009 is bad in law as learned Additional Sessions Judge, while directing release of car on superdari in favour of the registered owner i.e. R.K.Gupta (respondent No.2), has ignored the fact that respondent No.2 had sold the car to the petitioner for ₹1,60,000/- and executed the consideration receipt as well as Forms 29 & 30 in his favour to facilitate the transfer of registration of the car in petitioner's name.

7. There is merit in the contention of learned counsel for the petitioner. As per the status report, respondent No.2 was confronted

with those documents and he admitted his signatures on the receipt as well as Forms 29 & 30. Respondent No.2, however, took the defence that he had signed those documents in blank and given it to his brother late Sanjay Gupta 5/6 years back, which explanation of respondent No.2, prima facie, is an afterthought. It is also clear from the status report that respondent No.2 lodged the complaint regarding the theft of the car in question on 17th May 2004 and the FIR was registered at P.S. Paschim Vihar on 4th June 2004. Despite that, the complainant (respondent No.2), while applying for duplicate certificate of said car submitted a false affidavit claiming that the car was not involved in any crime/theft/superdari/challan etc.

8. Further, though respondent No.2 was served with the notice of instant petition filed by the petitioner, he has not cared to file a reply denying the facts stated in the status report or the petition. The fact that the cash receipt for ₹1.60 lacs and Forms No.29 and 30 are admittedly signed by respondent No.2 prima facie leads to an inference that the car in question was sold by respondent No.2 to petitioner No.1. The explanation of respondent No.2 that he had given blank signed cash receipt Forms No.29 and 30 to his brother 5/6 years earlier, is a question of fact which requires evidence.

9. In view of the above discussed facts and circumstances, I find that learned Additional Sessions Judge has committed a grave error in

releasing the car on superdari in favour of respondent No.2, before the finding of learned Metropolitan Magistrate on the closure report filed by the police and the protest petition filed by respondent No.2. Reasonable course of action under the circumstances was to wait for the outcome of the closure report/protest petition filed by respondent No.2 which could have settled the question of title also.

10. In view of the discussion above, the impugned order of learned Additional Sessions Judge dated 22nd July 2009 is set aside. Respondent No.2 is directed to surrender the car in question to the police within seven days. It is directed that the learned M.M., while deciding the protest petition against the closure report shall also pass appropriate order for the release of the car in terms of his finding on the protest petition.

11. The petition is disposed of accordingly.

(AJIT BHARIHOKE)
JUDGE

NOVEMBER 23, 2010

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