

Court No. - 90

Case :- APPLICATION U/S 482 No. - 26376 of 2021

Applicant :- Manoj Kumar

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Om Prakash Rai, Ashish Rai

Counsel for Opposite Party :- G.A.

Hon'ble Dinesh Pathak, J.

1. Heard learned counsel for applicant and learned AGA for the State.

2. The present applicant has invoked the inherent jurisdiction of this Court under Section 482 CrPC for setting aside the impugned order dated 16.07.2021 passed by District and Sessions Judge, District Gautam Budh Nagar in Revision No.82 of 2021 as well as the impugned order dated 25.03.2021 passed in Case Crime No.13 of 2021, under Section 411, 414 and 482 I.P.C., Police Station Sector 39 NOIDA, District Gautam Budh Nagar.

3. An FIR, being Case Crime No.0013 of 2021 dated 12.1.2021, has been lodged on behalf of police personnel qua theft of vehicles. As per FIR version, on information being received from the informer, four vehicles have been shown to be recovered from the place of parking including the vehicle in question i.e. Eicher 1110 Pro Truck (Canter) Registration No.U.P.14 JT 8918, Engine No. E424CDJM368027 and Chassis No. MC2F7HRCOJM262909. During pendency of trial, applicant has moved an application dated 19.1.2021 for release of the aforesaid vehicle claiming his ownership thereon. On the direction issued by learned court concerned report has been called for from the F.S.L. As per forensic report dated 6.2.2021 (Annexure No.6) there is tampering on the chassis number which was originally mentioned as MC 2F7HRCOJM262909 and besides that two more numbers are also reflected i.e. MC2BIHRC0GU115***** and 2F3HRC0115*****. Stares marked are illegible owing to excessive rubbing. Considering the tampering in the chassis number learned trial court has rejected the release application moved on behalf of present applicant vide order dated 25.3.2021. Having been aggrieved, present applicant has preferred revision being Crl. Revision No. 82 of 2021. Learned revisional court has rejected the revision and affirmed the order passed by the Chief Judicial Magistrate, which

is under challenge before this Court.

5. It is submitted by learned counsel for applicant that tampering in the chassis number has been made after the vehicle was recovered from the spot in question. He has purchased the truck (Canter) on hypothecation and recovery notice has been issued against the present applicant for the recovery of the loan amount. It is further submitted that on the same vehicle he has obtained all India permit. No other person came before the court to claim over the vehicle in question. It is further submitted that there is no difference in the vehicle registration number and the engine number except the last numerical of the chassis number which has been tried to be scratched/tampered by the erring person. It is further submitted that it is own admission of the accused persons, as mentioned in the FIR, that they indulged in the theft of the vehicle and sold them by changing their chassis numbers. In the light of the confession made by the accused the vehicle in question is not liable to be detained in the possession of the police whereas present applicant is under the heavy debt liability to owe the loan amount. It is further submitted that vehicle in question has been left exposed in vulnerable state in open filed at the police station, rendering it susceptible to deterioration over the time. Final adjudication of the trial likely to take sufficient time which would cause irreparable loss to the present applicant, in case, till the date of decision vehicle in question kept exposed in police custody. Therefore, vehicle in question (which is a case property) may be released in favour of the present applicant (owner of the vehicle) and whenever same is required for any enquiry present applicant will produce the same before the court competent. Lastly, learned counsel for applicant submits that applicant is ready to deposit surety against the vehicle in question which is a case property. In support of his contention, learned counsel for applicant has relied upon case of **Sunderbhai Ambalal Desai Vs. State of Gujarat reported in AIR 2003 Supreme Court 638**

6. Learned AGA has vehemently opposed the submissions as advanced by the learned counsel for the applicant and supported the judgment passed by the District Magistrate and the revisional court. It is contended that, prima facie, involvement of the vehicle in question in the alleged crime cannot be ruled out.

7. Having considered the rival submissions advanced by the learned counsel for the parties and perusal the documents available on record, it is manifested that except the tempering on the chassis number no other question has been raised with respect to the ownership of the present applicant over the vehicle in question,

which is the solitary ground taken by the courts below in negating his claim. Registration number and Engine number of the vehicle, which has been sought to be released, have been found intact without any tempering which has been endorsed in the name of the present applicant. As per report submitted by the F.S.L. two more numbers were engrafted/reflected besides the original chassis number i.e. MC2F7HRC0JM262909, which also mentioned in the certificate of registration (page No.42). In the light of the existence of the original chassis number as mentioned in the certificate of registration issued in the name of present applicant, prima facie, negating his claim over the vehicle in question, in my considered opinion, would not be unjustifiable. There is no specific report of F.S.L. questioning the original chassis number which is already existed at the spot. Reflection of two other chassis number besides the original one, which are unclear in last letters/numbers due to excessive rubbing cannot be said to be sufficient ground to retain the vehicle in question under the custody of police in exposed condition. No finding has been recorded by the court below questioning registration number, engine number and registration certificate in the name of present applicant with respect to the vehicle in question i.e. Eicher (Canter) bearing registration No. UP14 AT 8918 and also keeping in view the fact that since the date of confiscation of the aforesaid vehicle, same is lying exposed in open area of police station and the possibility of deterioration of the vehicle due to passage of time cannot be ruled out and the proceeding is still pending consideration and also the ratio decided by the Hon'ble Supreme Court in the case of **Sunderbhai Ambalal Desai (supra)**, I am of the view that there is no justification to keep the vehicle in question in the police custody and the same is liable to be released in favour the applicant, which is the case property in the aforementioned case crime, particularly considering the fact that no other person namely insurance company or any third party came forward to claim ownership of the vehicle in question. The relevant paragraphs of the case of **Sunderbhai Ambalal Desai (supra)** is quoted herein below:

"17. In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles.

18. In case where the vehicle is not claimed by the accused, owner, or the insurance company or by third person, then such vehicle may be ordered to be auctioned by the Court. If the said vehicle is insured with the insurance company then insurance company be informed by the Court to take possession of the vehicle which is not claimed by the owner or a third person.

If Insurance company fails to take possession, the vehicles may be sold as per the direction of the Court. The Court would pass such order within a period of six months from the date of production of the said vehicle before the Court. In any case, before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchnama should be prepared."

8. In this conspectus, as above, I am of the considered view that the present application is liable to be entertained and the release order is liable to be passed to secure the ends of justice. Accordingly, the application is allowed and the impugned order dated 16.07.2021 passed by District and Sessions Judge, District Gautam Budh Nagar in Revision No.82 of 2021 as well as the order dated 25.03.2021 passed in Case Crime No.13 of 2021, under Section 411, 414 and 482 I.P.C., Police Station Sector 39 NOIDA, District Gautam Budh Nagar are hereby quashed and vehicle in question is released with following conditions:

(i) Applicant shall produce the original registration certificate, insurance paper before the concerned Police Station which shall be verified properly and true attested copies thereof.

(ii) Applicant shall execute a bond as per market value of the vehicle with two solvent sureties to the satisfaction of the authorities/court concerned.

(iii) Applicant shall keep the vehicle insured at all times till the conclusion of the trial and produce the Insurance Certificate before the Trial Court as and when required.

(iv) Applicant shall not change the colour or any part of the engine of the vehicle, without prior permission of the court concerned.

(v) Applicant shall produce the vehicle either before the Court or before such other authorities as the Court may direct.

(vi) Applicant will not transfer the vehicle to anybody else nor possession of the same be parted with until disposal of the case.

(vii) Applicant shall not allow the vehicle to be used in the commission of any offence.

Order Date :- 20.11.2023

Md Faisal