

Neutral Citation No. - 2024:AHC-LKO:63166

Court No. - 13

Case :- APPLICATION U/S 482 No. - 8115 of 2024

Applicant :- Anuj Kumar Biswas

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home
Deptt. Lko. And 2 Others

Counsel for Applicant :- Ram Prasad Dwivedi

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Lavania,J.

1. Sri Ajey Singh, learned Advocate has filed Vakalatnama on behalf of the opposite party no.3, which is taken on record.

2. Heard learned Counsel for the applicant, Sri Ajey Singh, learned Counsel for the opposite party no.3 and learned A.G.A. for the State and perused the record.

3. The present application has been filed seeking following main reliefs:-

"Wherefore it is most humbly and respectfully prayed that this Hon'ble court may kindly be pleased to set-aside the impugned order dated 02.08.2024 passed by the court of learned Chief Judicial Magistrate, Bahraich in case no. 8282 of 2024 (State Versus Anuj Kumar Bishwas), under section 207 of Motor Vehicle Act pertaining to Police Station Dargah Sharif, District Bahraich, by which the learned magistrate has illegally passed the order for release of the vehicle UP46T2425 in favour of opposite party no. 3 as contained as Annexure No. 1 to this petition."

4. By means of the present application the applicant has assailed the order dated 02.08.2024 passed by Chief Judicial Magistrate, Bahraich (in short 'Magistrate'), in Case No. 8282 of 2024 (State Versus Anuj Kumar Bishwas),

under Sections 207 of Motor Vehicle Act. The order under challenge reads as under:-

"02.08.2024

प्रार्थी अनुज कुमार विश्वास पुत्र शेखरचन्द्र की ओर से वाहन पंजीयन संख्या यू0पी0 46 टी/2425 को अपने पक्ष में अवमुक्त किये जाने हेतु इस आधार पर प्रार्थनापत्र प्रस्तुत किया गया है कि प्रश्नगत वाहन पुलिस अभिरक्षा में खड़ा है वह वाहन का पंजीकृत स्वामी है। थाना परिसर में खड़ा रहने से वाहन खराब हो रहा है। अतः वाहन को आवेदक के पक्ष में अवमुक्त किया जाये। समर्थन में पंजीयन प्रमाण पत्र, की स्कैन कापी संस्थित की गयी है।

एक अन्य प्रार्थनापत्र आवेदक सददाम पुत्र फतेह मोहम्मद की ओर से वास्ते रिलीज किये जाने प्रश्नगत वाहन इस आधार पर प्रस्तुत किया गया है कि उसके द्वारा प्रश्नगत वाहन जरिए नीलामी टाटा मोटर्स फाइनेन्स कम्पनी से मु0 बीस लाख पचास हजार रुपये में क्रय कर जरिए ऑन लाइन ट्रांजेक्शन रुपये की अदाएगी किया। नीलामी से पूर्व पंजीकृत स्वामी अनुज कुमार को फाइनेन्स कम्पनी द्वारा नोटिस निर्गत की गयी किन्तु इनके द्वारा बकाया धनराशि की अदाएगी नहीं की गयी। तत्पश्चात् अनुज कुमार द्वारा माननीय उच्च न्यायालय, बेंच लखनऊ में याचिका संख्या 3989/2023 योजित की गयी जिसका निस्तारण माननीय उच्च न्यायालय द्वारा दिनांक 19.05.2023 को करते हुए इस निर्देश के साथ निस्तारित की गयी कि संबंधित प्राधिकारी के समक्ष उपस्थित हों। तदुपरान्त प्रश्नगत वाहन की नीलामी उपरोक्त फाइनेन्स कम्पनी द्वारा जरिए बीडर सौरभ के द्वारा प्रार्थी के पक्ष में वाहन को सुपुर्द किया गया। पंजीकृत स्वामी वाहन को अन्तरित करने से हीला हवाली कर रहा है। पुलिस ने प्रार्थी व न्यायालय को धोखा देकर वाहन को धारा 207 एम0 वी0 एक्ट में चालान कर दिया जिसमें अनुज कुमार ने जुर्म इकबाल करके वाहन को अपने में रिलीज का आदेश प्राप्त कर लिया। जबकि अनुज कुमार प्रथम स्वामी नहीं है, प्रार्थी ने प्रश्नगत वाहन संबंधित फाइनेन्स कम्पनी से जरिए नीलामी धनराशि का भुगतान करके खरीदा है वाहन थाने में खड़े रहने से खराब हो रहा है अतः प्रश्नगत वाहन आवेदक के पक्ष में रिलीज करने की कृपा करें।

आवेदक सददाम ने समर्थन में प्रार्थी अनुज कुमार द्वारा बकाये संबंधी स्टेटमेन्ट की प्रति, पंजीयन प्रमाण पत्र, नोटिस की प्रति, आरबीट्रेशन के आदेश की प्रति, परिवहन विभाग को भेजे गये फार्म प्रारूप की प्रति, फाइनेन्स कम्पनी द्वारा ए0आर0टी0 श्रावस्ती को प्रेषित पत्र की प्रति, फार्म 36 की प्रति व फोटोग्राफ वाहन तथा आवेदक सददाम द्वारा माननीय उच्च न्यायालय, बेंच लखनऊ में याचिका संख्या 5472/2024 में पारित आदेश दिनांक 20.06.2024 की प्रति एवं अनुज कुमार की ओर संस्थित याचिका संख्या 5350/2024 में माननीय उच्च न्यायालय, बेंच लखनऊ में पारित आदेश दिनांक 13.06.2024 की प्रति संस्थित किया है।

विद्वान अभियोजन अधिकारी की आख्या के अनुसार प्रश्नगत वाहन चालानी रिपोर्ट के आधार पर धारा 207 एम0वी0एक्ट में सीज हुआ है रिलीज का विरोध है।

सुना गया तथा प्रपत्रों का परिशीलन किया।

पंजीयन प्रमाण पत्र के अनुसार आवेदक अनुज कुमार प्रश्नगत वाहन का पंजीकृत स्वामी था, परन्तु आवेदक सददाम की ओर से उपलब्ध कराये गये प्रपत्रों के अनुसार प्रश्नगत वाहन उसके द्वारा जरिए नीलामी टाटा मोटर्स फाइनेन्स कम्पनी से वाहन क्रय की धनराशि मु0 बीस लाख पचास हजार रुपये का ऑन लाइन भुगतान कर प्राप्त की गयी यह भी स्पष्ट है कि कथित नीलामी के पूर्व संबंधित फाइनेन्स कम्पनी द्वारा पंजीकृत स्वामी अनुज कुमार को बकाया धनराशि की वसूली हेतु नोटिस जारी की गयी परन्तु उसके द्वारा भुगतान न कर सीधे माननीय उच्च न्यायालय में याचिका लगायी गयी जिसका

निस्तारण माननीय उच्च न्यायालय द्वारा करते हुए उसे आरबीट्रेशन के समक्ष उपस्थित होकर कार्यवाही हेतु निर्देशित किया गया। इस आदेश के अनुपालन में अनुज कुमार आरबीट्रेशन के समक्ष याचना पत्र प्रस्तुत किया जो निरस्त किया जा चुका है।

उल्लेखनीय है कि अनुज कुमार द्वारा प्रस्तुत मामले में पूर्व पंजीयन प्रमाण पत्र के आधार पर जुर्म इकबाल प्रार्थनापत्र प्रस्तुत कर अपना केस समाप्त कराने के उपरान्त न्यायालय में गलत तथ्यों को पेश कर वाहन को अपने पक्ष में रिलीज करा लिया। तदुपरान्त आवेदक सददाम की ओर से वाहन रोकने हेतु याचना पत्र प्रस्तुत किया जिस पर आख्या मांगी गयी। इसी बीच अनुज कुमार ने माननीय उच्च न्यायालय में रिलीज आदेश दिनांक 22.04.2024 का अनुपालन कराये जाने हेतु याचिका संस्थित की गयी जिसे दिनांक 13.06.2024 को निरस्त की गयी। तथा आवेदक सददाम द्वारा याचिका संख्या 5472/2024 सददाम प्रति ए0आ0टी0ओ0 आदि संस्थित की गयी जिसका निस्तारण दिनांक 20.06.2024 को माननीय उच्च न्यायालय द्वारा करते हुए उपलब्ध प्रपत्रों के आधार पर वाहन का अन्तरण आवेदक के पक्ष में करने हेतु निर्देशित किया गया जिस हेतु निर्धारित प्रारूप का निष्पादन कराया गया। चूंकि प्रथम पंजीकृत स्वामी फाइनेन्स कम्पनी, द्वितीय अनुज कुमार विश्वास थे, किन्तु अनुज कुमार द्वारा बकाया धनराशि का भुगतान न करने पर प्रथम स्वामी/फाइनेन्स कम्पनी द्वारा प्रश्नगत वाहन को आवेदक सददाम के पक्ष में नीलाम कर उसके सुपुर्द किया गया है। ऐसी परिस्थिति में पूर्व पारित रिलीज आदेश दिनांकित 22.04.2024 एवं आवेदक अनुज कुमार विश्वास द्वारा प्रस्तुत रिलीज प्रार्थनापत्र निरस्त किये जाने तथा आवेदक सददाम की ओर से प्रस्तुत प्रार्थनापत्र वाहन रिलीज निम्न शर्तों के अधीन स्वीकार किये जाने योग्य है।

आदेश

प्रार्थनापत्र वाहन रिलीज आवेदक अनुज कुमार विश्वास निरस्त किया जाता है। साथ ही वाहन रिलीज के संबंध में न्यायालय द्वारा पूर्व पारित आदेश दिनांकित 22.04.2024 भी निरस्त किया जाता है।

आवेदक सददाम का वाहन रिलीज प्रार्थनापत्र स्वीकार किया जाता है। उसके द्वारा मु0 बीस लाख रुपये का व्यक्तिगत बंधपत्र एवं समान धनराशि की एक प्रतिभू दाखिल करने तथा इस आशय की अन्डर टेकिंग देने पर कि वह उक्त वाहन वाद अवधि में सुरक्षित रखेगा, न्यायालय अथवा विवेचक द्वारा आदेशित किये जाने पर अपने व्यय पर पेश करेगा, उसके रंग रूप में कोई परिवर्तन नहीं करेगा वाद अवधि के लिये उसकी सुपुर्दगी में दिया जाये।"

5. The order has been challenged on various grounds including the ground to the effect that the order dated 02.08.2024, in issue, has been obtained by concealing material facts related to the order dated 25.06.2024 passed by this Court in Application U/s 482 No. 5663 of 2024 (Saddam Versus State of U.P. and Others), filed by opposite party no.2/Saddam. The order dated 25.06.2024 being relevant reads as under:-

"Let notice be issued to the opposite party no. 3, returnable at an early date.

Steps be taken within a week.

In the meantime, the State as well as the opposite party no. 3 may file their objections.

List/Put up this matter on 16.07.2024, within top five cases.

The AGA shall seek instruction in this regard.

Till then, the vehicle in question shall not be released in favour of any of the parties. "

6. It is stated by learned Counsel for the applicant that the order dated 25.06.2024 passed by this Court was not brought to the notice of the concerned Magistrate as if the same was on record the Magistrate would not have passed the impugned order dated 02.08.2024. The opposite party no.3, concealed the material facts related to order dated 25.06.2024, whereby this Court has directed that till the next date of listing the vehicle in question shall not be released in favour of any of the parties.

7. It is further stated that after obtaining the order under challenge dated 02.08.2024, the opposite party no.3/(applicant in Application u/s 482 No. 5663 of 2024) withdrew the said application, as is evident from the order dated 06.08.2024 (Annexure No. 14). The order dated 06.08.2024 reads as under:-

"At the very outset, learned counsel for the applicant says that he does not want to press this application at this stage and it may accordingly be dismissed as not pressed.

The aforesaid has not been opposed.

In view of the above, the instant application is dismissed as not pressed.

Office is directed to return certified copies of the documents annexed with this application to the learned counsel for the applicant as per relevant Rules in this regard."

8. It is also stated that non placing the interim order dated 25.06.2024 passed by this Court before the Magistrate by the opposite party no.3 amounts to concealment of material fact from the court concerned.

9. It is further stated that order dated 02.08.2024, in issue, has been obtained by concealment and fraud on court and as such the same is nullity.

10. Learned Counsel for the applicant also stated that the order impugned dated 02.08.2024, herein, is liable to be interfered with by this Court, in exercise of jurisdiction under Section 428 B.N.S.S., on the ground that the same has been obtained in violation of interim order dated 25.06.2024 passed by this Court as also by concealment of order dated 25.06.2024 and fraud on court.

11. In response, learned Counsel for the opposite party no.3 stated that it appears that inadvertently the fact related to order dated 25.06.2024 could not be brought to the notice of the Magistrate and also placed various factual aspect of the case before this Court, which this Court is not inclined to consider. It is for the reason that the impugned order dated 02.08.2024 is in the teeth of the interim order dated 25.06.2024 passed by this Court.

12. The law on the aforesaid is well settled. Accordingly, to the same any action in contravention of interim order of the Court would be nullity. (Vide: ***Mulraj Versus Murti***

Raghunathji, AIR 1967 SC 1386; Surjit Singh v. Harbans Singh (1995) 6 SCC 50, 52; Tayabbhai M. Bagasarwalla v. Hind Rubber Industries (P) Ltd., (1997) 3 SCC 443; Jehal Tanti Nageshwar Singh, (2013) 14 SCC 689; Satyabrata Biswas v. Kalyan Kumar Kisku, (1994) 2 SCC 266; Jehal Tanti v. Nageshwar Singh, (2013) 14 SCC 689; DDA v. Skipper Construction Co. (P) Ltd., (1996) 4 SCC 622; Century Flour Mills Ltd. v. S. Suppiah, 1975 SCC OnLine Mad 73; Sujit Pal v. Prabir Kumar Sun, 1985 SCC OnLine Cal 146 and Keshrevial Jivji Shah v. Bank of Maharashtra, 2004 SCC OnLine Bom 368).

13. Undisputedly the order dated 25.06.2024 was not brought to the notice of concerned Magistrate by the opposite party no.3 and being so, this Court is of the view that opposite party no.3 has concealed the material facts of the case for getting the order 02.08.2024 in his favour.

14. Further, order obtained by concealment of material facts amounts to playing fraud on court and fraud vitiates all solemn acts and a party who obtains an order in its favour is not entitled to be heard on merits of the case. In this regard relevant portion of judgment passed in Writ Petition No. 5874(MB) of 2020 (Manvendra Singh Versus State of U.P. and Others) decided on 06.03.2020, is extracted herein below:-

""Keeping in view the said facts as well as the law laid down by the Hon'ble Apex Court in the case of Prestige Lights Ltd. v. State Bank of India : (2007) 8 SCC 449, wherein it has been held that in exercising power under Article 226 of the Constitution of India, the High Court is not just a court of law, but is also a court of equity and a person who invokes the High Court's jurisdiction under Article 226 of the Constitution, is duty bound to place all the facts before the court without any reservation. If there is suppression of material facts or twisted facts have been placed before the High Court then it will be fully justified in refusing to entertain petition filed under Article 226 of

the Constitution. The Apex Court while referring to the judgment of Scrutton, LJ. in R v. Kensington Income Tax Commissioners, observed as under:-

"In exercising jurisdiction under Article 226 of the Constitution, the High Court will always keep in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise-guilty of misleading the Court, then the Court may dismiss the action without adjudicating the matter on merits. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible."

In Welcome Hotel and Ors. v. State of Andhra Pradesh and Ors. etc. AIR 1983 SC 1015, the Apex Court has held that a party which has misled the Court in passing an order in its favour is not entitled to be heard on the merits of the case. In K.D. Sharma v. Steel Authority of India Ltd. and Ors., [2008 (12) SCC 481] the Apex Court has held that the jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary and it is imperative that the petitioner approaching the Writ Court must come with clean hands and put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim. The same rule was reiterated in G. Jayshree and Ors. v. Bhagwandas S. Patel and Ors.: (2009) 3 SCC 141.

In Dalip Singh Versus State of Uttar Pradesh and others [(2010) 2 Supreme Court Cases 114], the Apex Court seriously criticized the making of false statement on oath and the attempt of a litigant in misleading the Court.

It is settled law that one should approach the court with clean heart and clean mind to get a relief and one who does not come with clean heart and clean mind, dis-entitles himself from getting any relief from the Court. From what has been mentioned above, it is clear that the petitioner has filed this writ petition with oblique motives and has not presented the correct facts just to gain undue advantage. Such type of practice should always be discouraged and is highly deprecated. They belong to the category of persons

who not only attempt, but succeed in polluting the course of justice.

In Ram Preeti Yadav Vs. U.P. Board of High School and Intermediate Education and others, 2003 (Suppl.) 3 SCR 352, it was reiterated after referring to various earlier decisions of the Apex Court that fraud, misrepresentation and concealment of material fact vitiates all solemn acts.

In State of Andhra Pradesh & another Vs. T. Suryachandra Rao, AIR 2005 SC 3110, the Apex Court after referring to various earlier decisions held that suppression of a material document would also amount to a fraud on the Court. The same view has been reiterated in Bhaurao Dagdu Paralkar Vs. State of Maharashtra & others, AIR 2005 SC 3330.

In R. Vishwanatha Pillai Vs. State of Kerala & others, JT 2004(1) SC 88 the Apex Court observed that a person, who seeks equity, must act in a fair and equitable manner.

In Rajabhai Abdul Rehman Munshi Vs. Vasudev Dhanjibhai Mody, AIR 1964 SC 345, it was held that "if there appears on the part of a person, who has approached the Court, any attempt to overreach or mislead the Court by false or untrue statements or by withholding true information which would have a bearing on the question of exercise of the discretion, the Court would be justified in refusing to exercise the discretion or if the discretion has been exercised in revoking the leave to appeal granted even at the time of hearing of the appeal". The same view was reiterated and followed in Vijay Syal & another Vs. State of Punjab & others (2003) 9 SCC 401.

In addition to abovesaid facts, the aforesaid concealment is also amounts to make fraud on the court, so in view of the above said facts, Hon'ble Apex Court in Andhra Pradesh State Financial Corporation Vs. M/S GAR Re-Rolling Mills & Anr.,, AIR 1994 SC 2151; and State of Maharashtra & Ors. Vs. Prabhu, (1994) 2 SCC 481, has observed that a writ court, while exercising its equitable jurisdiction, should not act as to prevent perpetration of a legal fraud as the Courts are obliged to do justice by promotion of good faith. Equity is, also, known to prevent the law from the crafty evasionss and subletties invented to evade law.

Hon'ble Apex Court in Smt. Shrisht Dhawan Vs. Shaw Brothers, AIR 1992 SC 1555, has held as under:-

"Fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It is a concept descriptive of human conduct."

In United India Insurance Co.Ltd. Vs. Rajendra Singh & Ors., (2000) 3 SCC 581, the Apex Court observed that

"Fraud and justice never dwell together" (fraus et jus nunquam cohabitant) and it is a pristine maxim which has never lost its temper over all these centuries.

The ratio laid down by the Supreme Court in various cases is that dishonesty should not be permitted to bear the fruit and benefit to the persons who played fraud or made misrepresentation and in such circumstances the Court should not perpetuate the fraud by entertaining the petitioners on their behalf.

In Union of India & Ors. Vs. M.Bhaskaran, 1995 Suppl. (4) SCC 100, the Apex Court, after placing reliance upon and approving its earlier judgment in District Collector & Chairman, Vizianagaram Social Welfare Residential School Society. Vizianagaram & Anr. Vs. M. Tripura Sundari Devi, (1990) 3 SCC 655, observed as under:-

"If by committing fraud any employment is obtained, the same cannot be permitted to be countenanced by a Court of Law as the employment secured by fraud renders it voidable at the option of the employer."

Similar view has been reiterated by the Apex Court in the case of S. Pratap Singh Vs. State of Punjab, AIR 1964 SC 72; Ram Chandra Singh Vs. Savitri Devi & Ors., (2003) 8 SCC 319; and Vice Chairman, Kendriya Vidyalaya Sangathan & Anr. Vs. Girdharilal Yadav, (2004) 6 SCC 325.

Thus "Fraud" as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which includes the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. It is also well settled that misrepresentation itself amounts to fraud."

14. In view of the aforesaid, the present application is **allowed**. The order dated 02.08.2024 passed by the concerned Magistrate is hereby set aside. The matter is remanded back to the concerned Magistrate to decide the case afresh strictly in accordance with law, expeditiously.

Order Date :- 12.09.2024

Jyoti/-