

In the High Court of Punjab and Haryana at Chandigarh

CRM-M-11936 of 2013

Date of Decision: 05.01.2015

Gurmail Singh

---Petitioner

versus

State of Punjab and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr.H.S.Dhandi, Advocate
for the petitioner**

**Mr. Sandeep Kumar Bansal, AAG, Punjab
for the respondent-State**

**Mr. Sarju Puri, Advocate
for respondent No.2**

- 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 the Digest?**

REKHA MITTAL, J.

The present petition under Section 482 of the Code of Criminal Procedure (in short “Cr.P.C.”) lays challenge to orders dated 7.2.2013 (Annexure P-2) passed by the Judicial Magistrate Ist Class, Shaheed Bhagat Singh Nagar and dated 1.3.2013 (Annexure P-3) passed by the learned Sessions Judge, Shaheed Bhagat Singh Nagar whereby the prayer for grant of police remand of Gurjit Singh @ Jeeta, respondent No. 2 was declined.

The petitioner lodged FIR No. 88 dated 31.10.2012 for offence

punishable under Section 379 of the Indian Penal Code (in short “IPC”) in Police Station Behram on the allegations that respondent No. 2 committed theft of combine harvester bearing registration No. PB 32-D-7209 which was purchased by him after raising loan of Rs. 9,25,000/- from Kisan Vikas Agricultural Cooperative Bank. The accused was allowed to use the said combine harvester and he was to return the loan installments but failed to pay the remaining amount after deposit of two installments. The petitioner paid the entire outstanding amount to the bank and filed civil suit for recovery of said amount and combine harvester which was decreed and in execution of the decree, possession of combine harvester was delivered to him but few days thereafter, accused/respondent No. 2 committed theft of combine harvester from house of the petitioner/complainant.

Counsel for the petitioner contends that respondent No. 2 filed petition for grant of bail in anticipation of arrest before this Court, CRM-M-36403 of 2012 which was dismissed vide order dated 21.1.2013. Respondent No. 2 surrendered before the Illaqa Magistrate on 24.1.2013 and he was sent in custody. Police of police station, Behram moved an application on 25.1.2013 for production of respondent No. 2 for the purpose of investigation and he was ordered to be produced before the Court on 28.1.2013. The police made an application to the Court on 28.1.2013 for arrest of the accused and the court directed that the accused/respondent no. 2 be produced on 2.2.2013 but he was produced on 7.2.2013 and the court directed the investigating officer to join him in the investigation in presence of counsel for the accused. The application for police remand of the accused to know about combine harvester was declined by the Illaqa Magistrate vide

impugned order dated 1.3.2013. It is argued with vehemence that as the accused was not remanded to police custody thus, providing an opportunity to conduct custodial interrogation, a serious prejudice has been caused to the complainant as recovery of stolen property could not be got effected. It is further argued that the impugned orders may be set aside and a direction may be issued to consider application for police remand afresh and the accused may be remanded to police custody for necessary interrogation.

Counsel for the contesting respondent, on the contrary, contends that this court allowed interim bail to respondent No. 2 in proceedings for grant of pre arrest bail and in pursuance of the directions issued by this Court, the respondent joined investigation. Again, he was thoroughly interrogated for about two hours when the investigating officer was allowed to join him in the investigation on 7.2.2013 by the Judicial Magistrate. In the application filed by the investigating officer for police remand, no such plea was raised that interrogation of the accused in the presence of counsel was not fruitful or effective. The present petition has been filed by the complainant to secure police custody of the accused so that third degree method may be used to extract some information from him which is not permissible in law.

On completion of investigation, challan has already been presented in the court, charge has been framed and therefore, there is no question of respondent No. 2 being remanded to police custody at this stage particularly in the circumstances that the investigating agency did not make any request for further investigation by invoking Section 173(8) Cr.P.C. nor challenged the impugned orders.

I have heard counsel for the parties and perused the records.

The respondent/accused joined investigation on two occasions i.e. initially in compliance with interim direction issued by this court and later in pursuance of the order passed by the Illaqa Magistrate. As per allegations against the respondent, he committed theft of combine harvester, a motorised vehicle of quite big in size. If the police, either on the basis of interrogation of the accused or otherwise had failed to effect recovery of the stolen article, the complainant cannot be heard to say that the accused is required to be remanded to police custody in order to extract information from him by using third degree methods. This apart, challan has already been presented in the court, charge has been framed and the matter is pending trial. The offence under Section 379 IPC can be established against the accused even if the alleged stolen property was not recovered if evidence led by the prosecution inspires confidence in the mind of the court. In view of the above, I do not find any reason to interfere in the impugned orders.

Dismissed.

(REKHA MITTAL)
JUDGE

05.01.2015

PARAMJIT